

Women facing war



ICRC

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Women facing war

ICRC study
on the impact
of armed
conflict
on women



ICRC

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Foreword

The importance of drawing attention to the protection of women in situations of armed conflict cannot be overstated. The International Committee of the Red Cross (ICRC) has always been concerned by the situation of women, and in recent years has made extra efforts to ensure that their needs are being consistently met throughout ICRC activities. This commitment was reflected in a specific “pledge” made by the ICRC at the 27th International Red Cross and Red Crescent Conference in 1999.

This study on the impact of armed conflict on women has been undertaken as part of the ICRC’s endeavour to draw attention to the plight of women in wartime. It also pays tribute to their enormous strengths and capacities demonstrated on a daily basis in conflicts throughout the world. It will serve as a basis for targeted action and the ICRC will, to the extent that this is not already the case, gradually implement its main conclusions.

I would like to express my gratitude to the team headed by Ms Charlotte Lindsey, head of the *Women and War* project, which was given academic freedom to carry out the analysis, and to all the people who have contributed to the study.

With this publication the ICRC aims to further the worldwide debate on the situation of women caught up in war, in which several other organizations are



improvement in the situation of “women facing war”.

taking part. Beyond debate, the ICRC expects the study to bring about an

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I. Introduction

A. Background

THE problems experienced by women in situations of armed conflict have received increased attention in recent years, both within and outside the International Red Cross and Red Crescent Movement.^[1] The concern to address the problems faced by women more effectively has been reflected in resolutions pertaining to the Movement as a whole, and in more specific decisions taken within the International Committee of the Red Cross (ICRC).

In 1996, the 26th International Conference of the Red Cross and Red Crescent, in its resolution entitled “Protection of the civilian population in periods of armed conflict”, urged that “strong measures be taken to provide women with the protection and assistance to which they are entitled under national and international law”. It also encouraged “States, the Movement and other competent entities and organizations to develop preventive measures, assess existing programmes and set up new programmes to ensure that women victims of conflict receive medical, psychological and social assistance, provided if possible by qualified personnel who are aware of the specific issues involved”.^[2]

The 27th International Conference in 1999 adopted a Plan of Action which contains several specific references to the protection of women in armed conflict, and furthermore requests that “the ICRC formulate a set of guidelines aimed at better addressing the protection and assistance needs of women and girl children affected by armed conflict”.^[3] At this Conference, the ICRC pledged “to ensure that the specific protection, health and assistance needs of women and girl children affected by armed conflicts are appropriately assessed in its operations with the aim to alleviate the plight of the most vulnerable” and “to put emphasis throughout its activities on the respect which must be accorded to women and girl children... actively disseminating the prohibition of all forms of sexual violence to parties to an armed conflict”.^[4] In 1999 the ICRC also co-organized a workshop on widowhood and armed conflict to examine ways in which widows (and wives of the disappeared) were coping in situations of armed conflict around the world and how they could best be supported.^[5]

The issue of women affected by armed conflict has also been discussed recently among governments, both in the context of meetings focusing specifically on women (such as the 1995 Beijing Fourth World Conference on Women^[6] and the “Beijing +5” Conference^[7] held in New York in June 2000) and by forums with a broader agenda, such as the United Nations General Assembly and the United Nations Commission on Human Rights.

In its report to the Secretary-General, the UN Commission on the Status of Women points out that the Beijing Platform for Action stated that “international humanitarian law, which prohibits attacks on civilians, is at times systematically ignored, and human rights are often violated in armed conflict, affecting the civilian population, especially women, children, the elderly and the disabled”.^[8] Moreover, it

stated that “although entire communities suffer the consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex”.^[9] A UN Security Council resolution was passed in October 2000, inviting the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution.^[10]

Furthermore, within the UN system, there is an ongoing effort to integrate a gender perspective into all activities of the organization and in relation to all themes addressed. A gender perspective analyses the challenges which men and women face as a result of their respective social and cultural situations. As regards humanitarian assistance, this work is being initiated by the Inter-Agency Standing Committee (IASC) Working Group, a body with which the ICRC is associated. In 1999, the IASC produced a statement advocating the integration of a gender perspective into humanitarian assistance and commitments for action on the part of its member organizations, specifically with regard to the formulation of strategies for mainstreaming gender activities; the provision of data broken down according to sex and age and incorporation of a gender perspective in the analysis of information; the development of capacities for gender mainstreaming;^[11] and the implementation of reporting and accounting mechanisms for activities and results in gender mainstreaming.^[12] This statement arose from the realization that complex emergencies have a different impact on men and on women and that the needs of women are often neglected or overlooked. It was therefore determined that gender-sensitive humanitarian programmes could mitigate the different and negative impact of complex emergencies on women and men.^[13]

A number of non-governmental organizations have also contributed to raising international awareness on this subject, and several initiatives are being taken within academic circles to examine existing international law and its adequacy in today's armed conflicts.

B. The ICRC's special perspective on women and war

1. The ICRC's role

While the present study aims to identify the principal and most pressing needs of women in situations of armed conflict and to analyse the ICRC's response to those needs, it should be noted at the outset that not every need falls within the ICRC's mandate. The ICRC's mandate is to protect the lives and dignity of victims of armed conflict and internal disturbances and to provide them with assistance, and to act as promoter and guardian of international humanitarian law.

In simple terms, the ICRC's mandate and activities are limited in terms of context, time and geography. For the most part, the ICRC's activities are carried out in situations of armed conflict – be it international or non-international. In addition, on the basis of the Statutes of the International Red Cross and Red Crescent Movement, the ICRC operates in situations of internal disturbances. It may also take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary. Moreover, although the majority of its operations are carried out during armed conflicts, some of the ICRC's activities continue after the cessation of hostilities; such activities include, for example, the repatriation of prisoners of war or persons detained in relation to the hostilities, family reunification and the search for missing persons.

With regard to geographical limitations, the ICRC ordinarily operates in the territories of States that are themselves involved in an armed conflict or internal disturbances, or are affected by the direct results of such events. The ICRC may, in exceptional circumstances, principally as a result of massive influxes of refugees, also operate in the neighbouring States of countries stricken by armed violence, especially if it is the only humanitarian organization in the area. It will in principle cease its action when other humanitarian players are operational, except for specific activities such as the re-establishing of family links. Its activities may be prolonged if an element of threat remains as a result of hostilities.

International humanitarian law is at the core of the ICRC's protection activities. Its role as promoter and guardian of international humanitarian law has the following three facets: promotion and dissemination of the law; monitoring compliance with humanitarian law; and contribution to its development. In its role as promoter and guardian, the ICRC works for the "faithful application" of humanitarian law. In concrete terms, this means that its delegates monitor the application of humanitarian law by the parties to conflicts. If the law is violated, the ICRC attempts to persuade the relevant authority – be it a government or an armed opposition group – to modify its behaviour. The ICRC endeavours to build a constructive relationship with all parties involved in the violence and practises what could be called "discreet diplomacy". This being said, if all representations made confidentially fail to produce the desired results, the ICRC reserves its right to publicly point out the violations. The aim of such public statements is not to single out the individuals responsible but rather to appeal to the parties to the conflict to respect humanitarian law. The ICRC may also appeal to other States to intervene with the parties concerned, as they are required to do by Article 1 common to the Geneva Conventions, which requires States not only to respect the Conventions but also to *ensure* that they are respected.

Through its Advisory Service on International Humanitarian Law, the ICRC also encourages States to adopt national legislation for the implementation and application of humanitarian law at national level. ICRC legal experts at its headquarters in Geneva and in the field provide States with technical assistance concerning, for example, legislation to prosecute violations of humanitarian law or protect the red cross and red crescent emblems.

The ICRC's role as guardian of humanitarian law also includes carrying out activities aimed at promoting and disseminating the law. Although primary responsibility for the teaching of humanitarian law lies with States, over the years the ICRC has developed considerable expertise in the field and ICRC delegates spread knowledge of humanitarian law by running courses, especially for armed and security forces, State employees and diplomats, and civilians in general, including young people.

A further important facet of the role of guardian of humanitarian law concerns new developments of the law. The ICRC has in fact performed this role since it was founded, as it was the initiator of the first Geneva Convention of 1864. The ICRC was also directly involved in the drafting of subsequent international humanitarian law treaties, such as the Geneva Conventions of 1929 and of 1949, the Additional Protocols of 1977, the 1980 Convention on Certain Conventional Weapons and its Protocols, the 1997 Anti-personnel Mines Convention, the 1998 Rome Statute of the International Criminal Court (ICC) and the 1999 Protocol to the 1954 Convention on the Protection of Cultural Property.

2. **Introduction to the law**

It is important to identify the applicable law governing situations of armed conflict, and in addition to identify the rules protecting women, to assess whether these rules adequately protect and meet the needs of women. A presentation of the rules of international humanitarian law is also relevant to an understanding of the ICRC's operational response. As stated above, ensuring the faithful implementation of international humanitarian law is part of the ICRC's mandate. In this regard, international humanitarian law may serve as a yardstick for the assessment of the ICRC's response. Thus, each section of the study identifying a specific need contains a sub-section on the law, setting out the applicable norms of relevance to that need.

While the principal focus of these sub-sections is international humanitarian law – the legal regime specifically developed to regulate armed conflicts – there are also references to other relevant bodies of international law, principally human rights law and refugee law, which are relevant inasmuch as they are applicable in situations of armed conflict or internal disturbances and because they provide complementary protection.

The focus is on international law. That being said, it should not be forgotten that national law continues to apply during armed conflict and offers significant rights. In particular, at “administrative” level, it is national law rather than international law which provides and ensures the more substantial rights and structures, for example with regard to entitlement to documents, regulation of inheritance, etc. Situations also exist in which international law lays down broad obligations but leaves practical and detailed implementation to national law.

In addition to identifying relevant general and specific rules relating to women, the study also outlines the rules for the protection of children, the reason being that they provide important and specific protection for girls.

a) INTERNATIONAL HUMANITARIAN LAW

1) What is international humanitarian law?

International humanitarian law is the body of law which protects those not or no longer taking part in hostilities^[14] and regulates the means and methods of warfare. It is applicable in international and non-international armed conflicts and is binding on both States and armed opposition groups.^[15] International humanitarian law is also binding on troops participating in multilateral peacekeeping and peace-enforcement operations if they take part in the hostilities.^[16]

Multilateral conventions dealing with specific aspects of the waging of war have existed since the end of the nineteenth century. Today, the principal instruments of international humanitarian law are the four Geneva Conventions of 1949,^[17] their two Additional Protocols of 1977 - the first applicable in international conflicts and the second in non-international conflicts^[18] - and numerous conventions restricting or prohibiting the use of specific weapons, such as the 1980 Convention on Certain Conventional Weapons and its four Protocols and the 1997 Convention on Anti-personnel Mines.^[19] Mention should also be made of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols, the first of 1954 and the second of 1999.

At the time of writing there are 189 States party to the four Geneva Conventions and 159 and 151 to Additional Protocols I and II, respectively.

It should not be forgotten that an important body of customary rules of international humanitarian law also exists. Most of these customary rules correspond to existing treaty norms, but they often have a wider field of application. Indeed, most of the treaty rules are applicable to international armed conflict only, while many rules of customary international law are applicable to both types of conflict. It is important to note that the ICRC has been requested by the 26th International Conference of the Red Cross and Red Crescent to prepare a study on customary international law. This study will only be published in 2002 and could not, as a result, be taken into account in the present study.

Finally, it should be pointed out that humanitarian law establishes mechanisms to ensure that the rules aimed at protecting the victims of armed conflict and restricting means and methods of warfare are respected. Humanitarian law holds individuals responsible for violations of humanitarian law which they commit, or order to be committed. It requires that those responsible for serious violations be prosecuted and punished. In conformity with the four Geneva Conventions of 1949 and Additional Protocol I of 1977, States are obliged to suppress all violations of these instruments.

They have special obligations relating to certain serious violations called “grave breaches”. [20]

Furthermore, reference should be made to an important development in the repression of violations of international humanitarian law. Although the Geneva Conventions require States to prosecute or extradite persons suspected of having committed grave breaches of the Conventions, prosecutions have been few. Similarly, at the international level, with the notable exception of the military tribunals established in Nuremberg and Tokyo at the end of the Second World War, no mechanism existed for trying those accused of violations of international humanitarian law entailing individual responsibility. However, the atrocities committed in the conflicts in the former Yugoslavia and in Rwanda in the 1990s forced the international community to address this issue as a matter of urgency.

In 1993 and 1994 the Security Council established two ad hoc international criminal tribunals; the first to prosecute serious violations of international humanitarian law committed in the former Yugoslavia, and the second to prosecute similar violations as well as genocide in Rwanda.[21] Crucial in the fight against impunity for war crimes, these bodies have also played an important role in the interpretation and development of international humanitarian law. Additionally, the tribunals gave new impetus to the establishment of a permanent criminal court, culminating with the adoption in July 1998 of the Statute of the International Criminal Court.[22] The jurisprudence of these ad hoc tribunals and the adoption of the Rome Statute developed considerably the notion of war crimes, including serious violations in case of non-international armed conflict.

The UN Security Council also decided in August 2000 to set up a special court for Sierra Leone to prosecute persons bearing the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under the relevant Sierra Leonean law, in the territory of Sierra Leone, and called on the international community to contribute technical aid and funds. [23]

2) The structure of protection - general and specific protection

The starting point of any discussion on the protection afforded to women by international humanitarian law is the fact that they are entitled to the same protection as men – be it as combatants or as civilians or persons *hors de combat*. In addition, recognizing their specific needs, international humanitarian law grants women additional protection and rights. The present section will first set out the principal rules of general protection and then turn to the rules specifically for the benefit of women. This section will focus mainly on the rules relating to civilians. Those relating to combatants either actively taking part in hostilities or *hors de combat* because they are sick, wounded, shipwrecked or captured are presented in greater detail in the section on *Female combatants/Involvement of women in hostilities* and the chapter on *Detention*.

General protection

- Non-discrimination

One of the basic tenets of international humanitarian law is that the protection and guarantees it lays down must be granted to all without discrimination. Thus all four Geneva Conventions and both Additional Protocols provide that the specific categories of persons they protect must be “treated humanely (...) without adverse distinction founded on sex...”.^[24] This is a prohibition on discrimination and not on differentiation. Indeed, different treatment of men and women and the recognition that women may have additional, specific needs is reflected in the provisions of international humanitarian law granting women special rights and protection. Distinctions on the basis of sex are thus prohibited only to the extent that they are unfavourable or adverse.

- Principle of humane treatment

Another category of rules which are important for the protection of civilians are the provisions requiring belligerents to provide “humane treatment”. These norms – similar to human rights provisions – lay down minimum standards of treatment and fundamental guarantees which parties to a conflict must grant to everyone within their power. These fundamental guarantees are applicable in both international and non-international conflicts and, indeed, form the basis of Article 3 common to the Geneva Conventions which, until the adoption of Additional Protocol II, was the only provision regulating non-international conflicts.

- Protection against the effects of hostilities

One of the most fundamental rules of international humanitarian law is the principle of distinction, which requires parties to an armed conflict to distinguish between civilians and combatants at all times and not to direct attacks against civilians and the civilian population.^[25]

In addition to attacks specifically directed against civilians, international humanitarian law also prohibits indiscriminate attacks, i.e. those attacks which, although not targeting civilians, are of a nature to strike military objectives and civilians or civilian objects without distinction.^[26] A number of rules of international humanitarian law stem from the principle that civilians must be spared from the effects of hostilities. These include the prohibition of starvation of civilians as a method of warfare;^[27] the prohibition on attacks on objects indispensable to the survival of the civilian population;^[28] the duty of parties to a conflict to take precautions in attack in order to spare the civilian population;^[29] the prohibition on carrying out attacks on “works or installations containing dangerous forces” (dams, dykes and nuclear electrical generating stations, attacks on which may cause the release of dangerous forces and severe losses among the civilian population);^[30] the prohibition on the use of methods or means of warfare intended or expected to cause widespread, long-term and severe damage to the natural environment and thereby to prejudice the health or survival of the population;^[31] the prohibition on using the presence of the civilian population or

individual civilians to render certain points immune from military operations – i.e. using civilians as human shields; [32] and, last but not least, the prohibition on attacks on the civilian population or on civilians by way of reprisals. [33]

These basic principles apply in both international and non-international armed conflicts. While the provisions referred to so far are taken from Additional Protocol I, Additional Protocol II contains similar prohibitions on attacks on civilians, on starvation of the civilian population as a means of warfare and on attacks on works and installations containing dangerous forces, albeit in condensed form. [34]

- Restrictions and prohibitions on the use of specific weapons

International humanitarian law also protects civilians from the effects of hostilities by prohibiting the use of certain weapons which, by design, cause casualties among combatants and civilians without distinction.

The principle of distinction, set out above, prohibits parties to a conflict from employing weapons incapable of distinguishing between combatants and civilians. [35] Without specifically referring to this principle, the use of certain weapons has been prohibited, at least in part, because of their indiscriminate effects. The most notable examples are the instruments prohibiting the use of weapons of mass destruction, such as the 1925 Gas Protocol and the 1993 Chemical Weapons Convention.

The lasting effects of weapons on civilians is also a consideration which may lead to the restriction or prohibition of the use of certain weapons. For example, the use of anti-personnel mines was prohibited in 1997 largely because of their indiscriminate and long-lasting effects on civilians. [36] Other examples include booby-traps and other devices, the use of which is restricted in amended Protocol II to the 1980 Convention on Certain Conventional Weapons. [37]

Specific protection for women

The provisions of international humanitarian law which offer specific *additional* protection to women are either generic, such as the requirement in Article 14 of the Third Geneva Convention that “women... be treated with all the regard due to their sex”; or more specific, such as the provisions in the Third Convention which spell out how this general obligation should be implemented in practice, for example, by the provision of separate detention quarters and sanitary facilities for female prisoners of war (POWs) and the requirement that they be under the immediate supervision of women if confined. [38]

It is not the aim of this introduction to identify all the provisions providing specific protection for women, as they will be presented in each relevant section. However, as a general comment, the aim of these specific provisions is to provide additional protection for women with regard to their particular medical and physiological needs, which are often, but not always, related to their child-bearing role, and for considerations of privacy. For example, the Fourth Geneva Convention provides that expectant mothers are to be the object of particular protection and respect. In situations

of occupation it requires expectant and nursing mothers to be given additional food in proportion to their physiological needs and expressly includes expectant mothers among the persons for whose benefit belligerents may establish hospital and safety zones. [39] Similarly, if women are interned, they must be provided with separate sleeping quarters and sanitary facilities and, should this prove necessary, only be searched by women. [40]

b) OTHER BODIES OF LAW

Although the focus of the sub-sections on the law will be international humanitarian law, reference will also be made to other bodies of international law applicable in situations of armed conflict, principally human rights and refugee law, as they may offer important complementary protection.

In principle, **human rights law** is applicable at all times, i.e. both in peacetime and in situations of armed conflict. However, certain human rights instruments permit States to derogate from certain rights in times of public emergency. [41] That being said, it is not possible to derogate at any time from the right to life or from the prohibitions on torture or cruel, inhuman or degrading treatment, slavery and servitude, and retroactive criminal laws.

Another important difference between international humanitarian law and human rights law is who is bound by the law. While international humanitarian law binds all parties to an armed conflict – both government and armed opposition groups – human rights law lays down rules which bind governments in their relations with individuals. The traditional view is that non-State actors are not bound by human rights norms – a view which is increasingly the subject of debate.

Human rights law today is enshrined in a number of universal and regional instruments covering wide-ranging issues, such as civil and political rights, or focusing on specific rights, e.g. the prohibition on torture, or specific beneficiaries, e.g. women or children. [42] As is the case with international humanitarian law, an important body of customary law exists alongside these treaties but, for the sake of simplicity, the study will refer only to the treaty rules.

In addition to its complementarity with international humanitarian law, human rights law provides important additional protection through the highly developed mechanisms for its enforcement. Many of the instruments establish judicial or quasi-judicial bodies which oversee the implementation of the treaties and which are directly accessible to individuals claiming to have suffered violations of their rights. Such bodies can issue binding decisions requiring the respondent States to terminate the violation and, where appropriate, to make reparations.

In regard to refugees, international **refugee law** lays down general and basic principles for their identification and protection including definitions, the principle of *non-refoulement* and the basic rights to be granted to refugees. [43] As refugee law offers

important additional protection to that provided by humanitarian law, it is also referred to in the study. Additional rules, as well as the interpretation and practical implementation of these principles, are left to **national law**.

C.
**Understanding
the global impact of armed
conflict on women**

1.
**Female combatants / Involvement of women
in hostilities**

a) O V E R V I E W

“I felt it was my duty to take revenge for my father and my uncle also for those people who were killed when the war began.”^[44] Women are actively involved in many armed conflicts around the world and have played a part in wars throughout history. It was the Second World War that highlighted their role, primarily in reserve or support units (including work in munitions factories) in the German and British forces, and, in the case of the Soviet Union, their direct participation in the fighting as members of all services and units “constituting 8% of the total armed forces”.^[45] Since then, women have assumed a much greater role and join the armed forces more frequently, voluntarily and involuntarily, performing both support and combatant roles. For example, in the United States military, “overall, 14% of active US duty personnel are women”, and of the US forces who served in the 1990–1991 Gulf war, 40,000 were women.^[46] In many wars of liberation or guerrilla-type warfare women have played a vital role in the armed forces or in support roles; “in Nicaragua, women made up an estimated 30 percent of the Sandinista army and held positions as commanders, even of full battalions”;^[47] and “in El Salvador, 25% of the soldiers of the Faribundi (sic) Marti National Liberation Front (FMLN) were women”.^[48]

On occasion, the role of female “suicide bombers” has underscored the extent to which women are prepared to take action in conflicts. Ironically, much of their “success” in hitting targets has been attributed to the fact that as women they can often get closer to their objective – possibly because of the perception that they are less likely to carry out such attacks. “For many reasons, women are the preferred choice of secular groups when it comes to infiltration and strike missions. First, women are less suspicious. Second, in the conservative societies (...), there is hesitation to body-search a

woman. Third, women can wear a suicide device beneath their clothes and appear pregnant.” [49]

Some authors have attributed the violence and violations committed by men in armies to the military training they receive and the notion of masculinity which is often an integral and symbolic part of this training, exploiting “fears, vulnerabilities, prides and prejudices”. [50] There is also an ongoing debate in the military and academia in the West on the effect on military ideology of the inclusion of more women in the armed forces. Some academics believe that women who do join the military in “active roles are de-sexed and no longer regarded as feminine women”. [51]

Women may also pay a high price for leaving their socially constructed “household” role to become fighters. “There may be high costs to transgressing the culturally imposed boundaries between masculine and feminine behaviour (...). Men who refuse to fight risk being ridiculed, imprisoned or even killed for their lack of ‘courage’ or masculinity. Equally women who contradict female stereotypes by killing are often regarded as much more deviant or unnatural than men.” [52]

It should not be assumed that women are always part of the civilian population, playing caring and nurturing roles. Widely reported cases in Rwanda also showed that women were accomplices to and participants in horrific acts committed in the genocide. Women also actively support their menfolk in military operations - not always by taking up arms but by providing them with the moral and physical support needed to wage war, and in some cases inciting them to violence. Data collected in the course of the ICRC’s *People on War* project [53] exemplifies this: as an elder and religious leader in Somalia said, for example, “I believe that those civilians and fighters belong to one family group, once the civilians are going with the fighters - doing things such as cooking, treating them, and any other necessary thing.... Whatever happens to the civilians is up to them. If they collaborate with the fighters, then what happens is up to them”. And it is not just Somalis who replied in this way. One young man in the Southern Caucasus stated: “Somebody can hold a submachine gun and somebody only a ladle. But it doesn’t mean a cook is less responsible than a soldier”.

Women may shelter, hide, protect or feed combatants from either side and/or may also act as couriers and spies carrying military information, because they support the cause being fought for or because they are forced to participate in this way, as illustrated by a peasant woman from El Salvador: “It was terrible, because if you didn’t sell tortillas to the guerrillas, they got mad, and if you didn’t sell to the soldiers, they got mad, so you had to collaborate with both sides”. [54] A former soldier (from World War II) in Bosnia-Herzegovina said: “Everybody was a soldier at some point. Soldiers cannot survive alone, without logistics. Even common citizens became soldiers at a certain point. They were at least part of civil protection. They cooked, gave blood, gave whatever they could and had. They sheltered soldiers”. [55]

Furthermore, there are women who are at risk because of their presence among the armed forces, which is perceived as assisting them or being a part of the armed group even if they are there completely against their will - abducted for sex or to cook

and clean in the camp. During the period of their abduction – and often afterwards – these women and girls can be in considerable danger from attack by the opposing forces as well as by their abductors. The best-known large-scale example of such abductions was that of the so-called “comfort women” in the Far East during the Second World War – a term which in no way conveys the ordeal to which these women were subjected during their detention. In recent years, women and girls have also been abducted by armed groups in other countries.

Despite these examples of voluntary and involuntary participation of women as combatants and in support roles in armed conflict, some countries and cultures refuse to allow women to assume combat roles in the armed forces, and it can be said that primarily women experience war as members of the civilian population. (It can also be argued that women passing stories of ethnic and clan feuds and wars on to their children as fireside or bedtime stories is a subtle form of participation which encourages future generations to fight.)

b) REVIEW OF INTERNATIONAL LAW

- Non-discrimination

In the same way that it offers “general” and “specific” protection to civilian women, international humanitarian law also protects women who are taking an active part in hostilities. As a starting point, the principle of non-discrimination requiring parties to a conflict to afford the same treatment and protection to everyone without distinction, including on the basis of sex, also applies with regard to the rules of international humanitarian law which limit means and methods of warfare and protect combatants who are no longer taking part in hostilities. Women are thus entitled to the full protection of these rules of international humanitarian law on the same basis as men.

- Limits on means and methods of warfare

International humanitarian law provides crucial protection for women who are actively participating in hostilities by limiting the right of parties to a conflict to choose means and methods of warfare. One way in which this is achieved is by prohibiting or restricting the use of certain weapons. Express restrictions and prohibitions have existed since as long ago as 1868, and examples of more recent instruments include the 1980 Convention on Certain Conventional Weapons and its Protocols.^[56] In addition to these weapons whose use has been prohibited or restricted by a specific Convention, international humanitarian law also prohibits the use of other weapons, projectiles and material of a nature to cause superfluous injury or unnecessary suffering and requires States when studying, developing or adopting new weapons to determine whether their employment would violate international humanitarian law or other rules of international law.^[57]

Protection for combatants is also provided by the rules governing methods of warfare. These rules include the prohibition on attacking enemies who have surrendered or who have shown their intention of doing so or who have parachuted from aircraft in distress, the prohibition on declaring that no quarter shall be given, and the rules prohibiting perfidy. [58]

- Humane treatment

Finally, international humanitarian law requires wounded, sick, shipwrecked and captured combatants to be treated humanely even when they are in the hands of the adversary. In brief, such persons must be protected against all acts of violence and, if put on trial, are entitled to fundamental judicial guarantees. The first three Geneva Conventions [59] are devoted to such persons and contain numerous provisions granting additional specific protection to women. [60]

- The principle of distinction in law and practice

Owing to the important consequences of determining whether someone is a civilian or a combatant, a few words should be said about who can be considered a combatant. In international conflicts, combatants are members of armed forces, i.e. groups which are organized, under responsible command and subject to an internal disciplinary system which enables the rules of international law applicable in armed conflicts to be enforced. [61] There is no definition of combatants in non-international armed conflicts. Instead, the position is that a person taking a direct part in hostilities will not be afforded the protection against attacks that is accorded to civilians. [62] What does “taking a direct part in hostilities” actually mean? While the international humanitarian law instruments do not provide a definition, it is generally accepted that the committing of acts which, by their nature or purpose, are intended to cause actual harm to enemy personnel and material would amount to direct participation in hostilities, while the supply of food, shelter and sex to combatants or generally “sympathizing” with them would not. Already complex in theory, the practical application of these principles, especially in situations of non-international conflict, is one of the greatest challenges of international humanitarian law. Recognizing these inherent difficulties, international humanitarian law provides that, in case of doubt as to whether a person is a civilian or a combatant, that person is to be considered a civilian and therefore protected against attack. [63]

- Issue of concern

To conclude with a remark of a more general nature, there is a need for further research on trends in the evolution of warfare which amount to total war. The ICRC is very concerned about the dramatic consequences of such trends. On the one hand, this development seems to give legitimacy to initiatives taken to include the whole population in the war effort, thus rendering the distinction between combatants and non-combatants more difficult to establish. On the other hand, it reintroduces the

belief that the whole enemy population is guilty and can therefore be targeted using all possible means. When interviewed for the *People on War* project, many people replied that war was no longer just a matter of “combatants” and “non-combatants” but of “innocent people” and “people who are guilty”. As mentioned above, it is not so easy to distinguish between combatants and non-combatants, especially in wars where there are no front lines, no uniforms and no recognized military structures. This also has parallels with the fact that women are increasingly taking up arms (and therefore cannot be perceived as vulnerable). Members of the civilian population, traditionally those seen as outside the conflict and in need of protection, may be being perceived as “not so innocent”. How to offset those trends is a challenge whose importance should not be underestimated.

2. **Women mobilizing for peace**

Just as women have taken up arms, women have also been at the forefront of activities for peace, ranging from spontaneous demonstrations by women who do not want their husbands, sons, fathers and brothers to take part in war (especially non-international armed conflicts, e.g. women protesting in front of Yugoslav National Army barracks in 1991 for the return of their sons whom they did not want to participate in attacks against constituent parts of what was then Yugoslavia) to organized groups protesting against violence and types of weapons, such as the Women in Black ^[64] and women protesting against nuclear weapons at Greenham Common in England.

In Somalia, the traditional role played by women in peace and reconciliation was as peace delegates. “In the north-western corner of the Somali territory women, especially those past the age of fertility, were used as peace delegates (...). When peace had been concluded between any two previously warring lineages, and their mutual claims for compensation had been satisfactorily settled, they exchanged virginal maidens in a gesture aimed at reinforcing the reconciliation just achieved. This practice also signified, symbolically, that each clan’s young women who were given in marriage to the other would bear their husband’s sons who would compensate the lineage for those men it had lost in the war (...). To establish relations of affinity between the two communities, that would prevent a recurrence of hostilities in the future.” ^[65] The Somali proverb “where blood has been spilled, birth fluids should also be spilled” ^[66] highlights the contribution women have made in Somalia. Women were often the only ones who had freedom of movement between the camps of the adversaries and were often used as go-betweens, conveying messages of reconciliation from one side to the other.

The Women Building Peace Campaign, which is made up of women and women’s organizations from all over the world, states that “the perception of women as victims during violent conflict and war obscures their role as peacemakers in reconstruction

and peace-building processes.(...) Women are persistently excluded from decision-making processes in peace negotiations (...) and peace-building processes in spite of their central role in initiating dialogue and reconciliation at the grassroots level; and their exclusion results in a peace which fails to address sufficiently key issues such as the demobilisation and rehabilitation of women and girl soldiers, the continued violence against women refugees and the lack of redress for the human rights violations and abuses women suffer.” [67] For a stable peace situation, it is vital to include women in the peacemaking process, and “the equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflict are essential for the maintenance and promotion of peace and security.” [68]

Women should not be seen as powerless, but rather as individuals able to play a major part in the achievement of a long-term and stable peace. Moreover, precisely because they have also been victims of violence in armed conflict, they can help in the reconciliation process and prevent violence in the future if they are fully included in the reconstruction process. Thus women and men need to be equal partners in the establishment of peace.

3. **Vulnerability as a result of armed conflict**

In public perception (although not in international humanitarian law), within the civilian population as a whole women have tended to be classified in the single category of “women and children”, and men have tended to be largely forgotten as civilians, as if they were all combatants. Yet the civilian population comprises many men who are of combatant age but have not taken up arms, as well as boys and elderly men who should not be recruited because of their age and specific vulnerabilities. This assumption also overlooks the fact that women are more and more frequently taking up arms, as outlined previously. Furthermore, women certainly have needs, experiences and roles in war that differ from those of children.

Women also tend to be categorized as only “vulnerable”, yet they are not necessarily vulnerable and even display remarkable strength, as evidenced by their role as combatants or agents for peace, or by the roles they assume in wartime to protect and support their families.

Are women more vulnerable than men in situations of armed conflict? The answer is both yes and no. They should not be more vulnerable, but it must be recognized that women are particularly susceptible to marginalization, poverty and the suffering engendered by armed conflict, especially when they are already victims of discrimination in peacetime. Women may be particularly vulnerable if they are held up as “symbolic” bearers of cultural and ethnic identity and the producers of the future generations of the community. In such situations, women may be vulnerable to attack or threats from their own community for not conforming to this role, e.g. by not

wearing a veil or by cutting their hair, or conversely they may be targeted by the enemy in order to destroy or subvert this role. Present-day conflicts show that women are increasingly becoming the target of fighting. That being said, men also have to be clearly recognized as vulnerable, as in some conflicts as many as 96% of the detainee population are men and 90% of the missing are men. They are also prone to be wounded or killed as legitimate targets as members of armed forces or groups, who still largely recruit amongst male populations.

The vulnerability of different groups – whether male, female, elderly, infant, etc. – will differ according to their exposure to a given problem and their capacity to tackle it and to its impact on the group concerned. For example, both men and women can be the target in cases of the “disappearance” or detention of political opponents, whereas, in their capacity as actual or potential military opponents, men are generally singled out as a group for detention or summary execution. [69] Conversely, women and girls are far more exposed to sexual violence, regardless of the perpetrator’s motive, although men are also victims of such violence. “In certain villages bordering conflict young girls have admitted that armed men come in at night – these girls are used as sex workers – they are not allowed to protest – they are not allowed to lock their doors and the whole community tolerates this because these armed men protect the community – so it is a trade off...”. [70]

The very nature of women’s vulnerability often lies more in the fact that armed conflicts have evolved to the extent that the civilian population is totally caught up in the fighting and women are frequently the ones trying to maintain and provide for the everyday survival of themselves and their families. The notion of vulnerability also comprises the problem of being at risk (exposure to danger), the ability to cope with the situation and the stress, shock and trauma of warfare. Vulnerability, as such, does not fit into an easily determined category or definition – especially where women are concerned. It is therefore in accordance with the specific nature of each situation and the different factors involved that groups of women could be identified as being particularly vulnerable and in need of special assistance, e.g. pregnant women, nursing mothers, mothers of small children, female heads of households. At the same time, women throughout the world are showing not only that they can be extremely courageous and resilient but also that they can put their ingenuity and coping skills to full use in their daily roles as heads of household, breadwinners, and care-providers within their families, and active participants in the life of their communities, as employees of international organizations and NGOs, and as campaigners for change, agents for peace, etc. [71]

The degree of women’s vulnerability and hence the type of action necessary for responding to the needs clearly depend on the circumstances. In each situation, a thorough needs assessment is required to determine the most vulnerable groups – yet the possibility of women’s specific situations and needs must always be taken into consideration. For example, sexual violence as a means of warfare, or the demand that women have more children to replace lost sons (increased birth rate leading to an increased

demand for reproductive health services) makes women more vulnerable and their specific situation needs to be addressed.

The ICRC considers that vulnerability refers to the precarious living conditions of individuals, households or communities in the face of a threat in the form of an abrupt change in environment. For the ICRC, such a change is typically the result of an armed conflict or internal disturbances. To identify vulnerability, it is necessary to identify the threat of an abrupt change as well as the capacity to react or the resilience of the people affected. The following variables are often taken into account for vulnerability analysis: labour (income); human capital (access to education, health); housing; intra-household relations; and social capital (solidarity networks and reciprocity relationship between households and with State and private institutions).

4. **Change in women's traditional roles**

Armed conflicts greatly affect the lives of women and can completely change their role in the family, the community and the “public” domain. This is normally unplanned. The breakdown or disintegration of family and community networks forces women to assume new roles. Armed conflicts have created large numbers of female-headed households where the men have been conscripted, detained, displaced, have disappeared or are dead. Women invariably have to bear greater responsibility for their children and their elderly relatives – and often the wider community – when the men in the family have gone. The very fact that many of the menfolk are absent often heightens the insecurity and danger for the women and children left behind, and accelerates the breakdown of the traditional protection and support mechanisms upon which the community – especially women – have previously relied.

Increased insecurity and fear of attack often causes women and children to flee, so they form the majority of the world's refugees and displaced. Women are heads of households and breadwinners, taking over responsibility for earning a livelihood, caring for farms and animals, trading, and being active outside the home – activities often traditionally carried out by men. This necessitates the development of new coping skills and confidence, requiring courage and resilience to help sustain and rebuild families and communities torn apart by war. This is exemplified by the situation of many women in Sudan. “Because of the conflict the traditional family structure and force have suffered a general disintegration. In a time when basic needs for subsistence are barely available, children (...) sometimes have to look after themselves. (...) In the absence of men, the responsibility for the family is more and more a woman's charge. The result is that women have to fight more to get jobs and enough money, which leads to a migration phenomenon towards the cities where women are trying to do some business, in the markets, tea or coffee selling, etc. (...) Children are left alone and have nobody to look after them.” [72]

Women are challenging, and in some cases redefining, the cultural and social perception of themselves and their former boundaries in society. Women may for the first time have the possibility of working outside the home, being the income earners, main decision-makers and heads of household, organizing themselves with other women and going into the public sphere, which is often the preserve of men. This is eloquently summed up by Ana Julia from El Salvador: “Before the war women were not taken into consideration. Women were only working in the home. But, when war came, women came out of the house to demonstrate their capability. In part it was war which meant that women could be taken seriously and that they could do a lot of things. It made people realize that women are capable of changing our society”. [73]

Some of these “empowerment” changes may be seen as positive developments for women. However, they must be viewed through the lens of the loss, poverty and deprivation endemic to war, and the fact that in many societies women still only gain status (economic and social) through marriage. The lack of marriage possibilities (because of a lack of men, or social rejection of women because of a violation against them, or their role in the conflict) can have enormous implications for women. Moreover, any change is frequently reversed in post-war situations. Women are often expected to withdraw again into the home either because men are back (after demobilization, displacement, etc.) and want the jobs, or because the community is trying to go back to the “normality” of the pre-war status quo.

5. **Widowhood and the missing**

The proliferation of armed conflicts and the high levels of military and civilian casualties in those conflicts have meant that there are large numbers of widows in many countries. This has a major impact not only on women but on society in general.

Widowhood often changes the social and economic roles of women in the household and community, and the structure of the family. The impact of widowhood differs between cultures and religions. However, it can affect the physical safety, identity and mobility of women. Widowhood can also affect their access to basic goods and services necessary for survival and their rights to inheritance, land and property, in addition to the wider impact it has on the community.

Women whose husbands have “disappeared” or are missing experience many of the same problems as widows, but without official recognition of their status, and this again creates specific problems. In addition, they have to suffer the psychological effects and insecurity that stem from not knowing their husband’s fate and not being able to bury their loved ones and mourn properly, and the long-term consequences of raising children without a father and not being able to remarry.

In some communities, a widow is responsible for her late husband’s dependants, in others she is taken in by his family. The situation can become desperate for those who

have to assume responsibility for dependent family members. Furthermore, social traditions may be abandoned by families so overburdened by economic hardship resulting from war that they can no longer cope, or by families that no longer see themselves as being under any obligation towards the widow. If the link between the family and the woman has been severed by the death of the man, the widow may not always be allowed to keep her children. For example: “In Southern Sudan, in the southern tribes, traditionally widows stay with the family of the late husband, under the protection of a brother or the next man of kin. If the woman does not accept the brother she can remarry. Now with the conflict and the poverty, the woman who refuses the brother may be an outcast. Her own family may not have her back because they would have to pay back the dowry, and other men may not be ready to pay a dowry to marry her. More and more widows and their children have become an extra load to the husband’s family, so widows have to cope alone, sometimes with their children, and become ‘head of family’...”. [74]

Cultural practices may demand that widows are taken in by extended family members, but poverty or reduced resources resulting from war may mean that extended family members are not able to meet this obligation. Women can be left entirely without social status in their community when they lose their husbands, especially in patriarchal societies. The death of the main breadwinner can cause a breakdown in the family’s division of labour because women take over roles traditionally carried out only by men. Women can face extra difficulties when they become heads of households if they do not have an adequate educational background or are prevented from obtaining further education; this can, for example, restrict their capacity to find work. Moreover, in countries where land is regulated by customary laws or cultural barriers, women often do not have the right to own land and property; where armed conflict has led to the destruction of traditional coping mechanisms this may lead to widowed women becoming homeless and unable to support themselves and their dependants. [75] Many women have organized themselves into groups and networks to support each other and to fight for recognition of their loss and status, as well as to determine the fate of their missing relatives.

D. Objective and focus of the study

1. Objective of the study

In February 1998, the ICRC decided to develop a position paper on the situation of women affected by armed conflict, including an overview of ICRC activities carried

out on their behalf. Furthermore, within the context of the Avenir project, [76] it was decided that the need for clarification or development of international humanitarian law pertaining to certain problems or categories of persons should be followed attentively and appropriate measures be taken. It was decided that one of these measures should be the carrying out of a study on women affected by armed conflict. This study will serve as a basis for the formulation of guidelines regarding the protection and assistance of women in conflict situations for the next International Conference of the Red Cross and Red Crescent. [77]

This ICRC study aims to understand the ways in which women are affected by armed conflict by drawing on lessons from past and current experiences to improve the quality, relevance and impact of ICRC services. [78] The ultimate objective of such a study is to enhance the assistance and protection afforded to women affected by armed conflicts, by making the relevant actors sensitive to the specific needs of women and by improving the quality of activities carried out for/with women.

With this aim in mind, the ICRC study has:

- 1) identified and analysed women's needs;
- 2) analysed international humanitarian law and other relevant bodies of international law, such as human rights, and assessed the extent to which they provide adequate coverage of the needs identified;
- 3) drawn up a realistic and global picture of activities undertaken by the ICRC on behalf of women victims of armed conflict; [79]
- 4) drawn up a list of main recommendations (key points).

2. **Focus of the study**

a) FOCUS ON CIVILIAN WOMEN

The scope of the study extends primarily to civilian women and those no longer taking an active part in hostilities (*hors de combat*). The role of women as combatants and as agents of peace has also been examined to a limited extent in the introduction to this study to show the full spectrum of roles filled by women in wartime. Highlighting the role of women as combatants also serves to preface the chapter on women in detention, since one of the reasons for the detention of women in wartime is their capture as combatants.

b) FOCUS ON WOMEN, NOT GIRLS

In armed conflict, children, including girls, far from being spared the horrors of war, are unfortunately often placed at centre stage, where they become victims – not only because they make up a large part of the civilian population, but also because of their extreme vulnerability.^[80]

Physical and psychological abuse, a heavy workload, and reproduction-related health problems are specific problems that befall countless numbers of girls throughout the world and can continue or even increase during armed conflict. Furthermore, girls often experience especially serious health problems, especially gynaecological ones, if they are victims of sexual violence, particularly if they have to endure pregnancy and childbirth.^[81] In addition, prostitution invariably increases wherever military forces are to be found and often involves young girls, sometimes because they are believed to be free from sexually transmitted diseases such as HIV/AIDS. Problems of this nature often affect both girls and adult women; however, girls experience them in a particular way because they are not fully developed physically and psychologically and often lack information about such issues.

A girl's workload generally increases in situations of armed conflict, as girls are expected to lend greater assistance to their mothers in the absence of the menfolk. Where such assistance entails work in the fields or grazing animals, they are more exposed to the danger of injury, for example from landmines, and attacks or sexual abuse.

Children may also experience displacement differently. For example, it has been said: "Looking at gaps in the age distribution in refugee and internally displaced camps, there is empirical evidence that children between 3 and 6 years tend to get lost, or left behind, during the flight".^[82]

It is also particularly worrying to note that the number of children recruited or voluntarily enlisted in armed conflict is very high, despite the fact that it is a clear violation of international humanitarian law. While it is often reported that boys tend to be more involved in combat than girls, girl soldiers also exist. Moreover, girls are not only recruited to actively participate in hostilities, but also to serve as sex slaves or to be forced into "marriage" with commanders or other soldiers. It thus is of utmost importance that all forms of participation or involvement of children in hostilities be prevented and eliminated.^[83]

Since they are both women and children, girls are entitled not only to general protection, but also to the special protection accorded by the Geneva Conventions and their Additional Protocols. With regard to the age of recruitment and participation in hostilities, recent work by United Nations agencies and NGOs as well as the International Red Cross and Red Crescent Movement has attempted to develop the law in relation to children. Most notably, in May 2000 the Optional Protocol to the Convention on the Rights of the Child was adopted. This requires States Parties to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 do not take a direct part in hostilities; to ensure that persons

who have not attained the age of 18 are not compulsorily recruited into their armed forces, and to raise the minimum age of voluntary recruitment from 15. The Optional Protocol also prohibits armed opposition groups from recruiting or using in hostilities persons under the age of 18 in any circumstances. [84]

The different components of the International Red Cross and Red Crescent Movement are engaged in a range of activities on behalf of children affected by armed conflict. A common Plan of Action [85] concerning Children in Armed Conflicts has been endorsed and is being promoted in the course of the Movement's work. The ICRC has initiated, and continues to develop, activities to address the problems of children affected by armed conflict. It is not the purpose of the present study to duplicate this work, but rather to draw attention to its existence and to refer the reader to this more specific problem, although many of the findings and conclusions of this study may be of relevance. Thus, as the notion of adult and/or child may differ from one country to another, and even within communities, no reference has been made to age or to the specific issues of girls (children and teenagers) affected by armed conflict in the general framework of this study.

c) FOCUS ON WOMEN, NOT GENDER

In general, the term "gender" refers to "the female and male roles within a given culture; these roles and the expected behaviors of men and women are based on cultural practices formed over time..."; [86] and to "the socially defined or constructed sex roles, attitudes and values which communities and societies ascribe as appropriate for one sex or the other". [87] The terms "sex" and "female/male" are defined as "a person's genetic physiological or biological differences only." [88] The term "women" (or "girls"), on the other hand, can be used both as a biological and as a socially or culturally-based reference (to gender). [89]

The present study refers to women's needs rather than to gender-related needs, because the focus is on the assistance and protection given to female victims of war owing to their specific needs. However, it is important to note that the notion of gender often still forms the basis of the women's problems identified in this paper. For example, a woman is raped not only because of her biological difference. She may also be raped because the perpetrator aims to make her pregnant so as to produce children having the perpetrator's patrilineage, and/or because social, cultural or military education has not taught the perpetrator that women should be protected and that rape is prohibited. Thus a fundamental reason why women have specific needs is the "socially defined or constructed sex roles, attitudes and values (...) ascribe [d] as appropriate for one sex or the other", already defined as gender. [90]

The same understanding of terms can be applied with regard to sexual violence and gender-based violence. Gender-based violence is usually the overall term, including sexual violence and other types of gender-specific, not necessarily sexually-based,

violence such as honour crimes,^[91] female genital mutilation and domestic violence. Thus, according to these definitions of sexual violence and gender-based violence, examples such as exploitation for prostitution, coerced sexual acts in exchange for assistance, or the rape of a woman, can all be referred to as both gender-based violence and as sexual violence.

Throughout this paper, the term “gender” has been avoided unless it is specifically relevant. This reflects the fact that the term “gender” and its meaning are not widely recognized and understood, and can be misinterpreted (as referring to women only). Moreover, the term does not translate well into many languages. In French, for example, it is often translated as *sexo-spécifique*, which, applying the above definitions, is clearly missing the point.

E. Premise and methodology of the study

1. Premise

This study considers first the needs of the civilian population in situations of armed conflict and then those which are particularly relevant to or specific to women. This two-tier approach is a deliberate aspect of the methodology of the study, for several reasons. First of all, in identifying women’s needs, the study assumes that women have needs in common with the rest of the civilian population, e.g. the need for food. Therefore, in order to give a comprehensive picture of women’s needs, it was found useful to briefly highlight some of these common needs. At the same time, the identification of common needs should serve as a basis for reflection on whether women are particularly affected by a given phenomenon or are affected in different ways from men, or whether there are needs that are specific to women.

Secondly, the study is based on the recognition that the effects of armed conflict impact differently on men, women, girls and boys. The impact of war on women is not only a result of biological differences, but also of the different constraints and opportunities arising from their role in society (gendered roles). The effects of war on women (and men) are influenced by a number of factors: the type of conflict, i.e. whether it is an international armed conflict or a non-international armed conflict; the position of the woman in that conflict, i.e. whether as a displaced person, politician, head of household, combatant, etc.; and the different stages of the conflict, i.e. pre-, post- or ongoing conflict, whether under occupation, etc.

The emphasis of this study on women (and girls) is in no way intended to negate the suffering and devastation war causes for men and boys. Men are also often targeted specifically because of their gender, for example, arbitrary military conscription through mass roundups of young men to serve on the front line, arbitrary detention,

disappearances or summary execution. For example in Srebrenica, Bosnia-Herzegovina, in 1995, Muslim men and some boys were rounded up and detained or executed, whereas women and children were forced to leave the area. [92] It is also important to recognize that the plight of civilian women in war is often linked to the fate of the menfolk in their households and communities. In other words, attacks on undefended households and women, rape as a means of attacking the “enemy” population, the displacement of women and their dependants, etc., occur in part at least because of the absence of the men. This is not to deny that women face terrible hardships in armed conflict or that they have their own specific needs and vulnerabilities. On the contrary, it is to recognize that the fate of civilian women can be improved if humanitarian law is fully implemented and respected with regard to both combatants and non-combatants, be they male or female.

Thirdly, the two-tier approach is the one adopted by law. As will be seen, women who do not take part in hostilities are first and foremost protected by a whole range of rules of international humanitarian law safeguarding the civilian population and those *hors de combat*. In addition, recognizing their specific needs, international humanitarian law also lays down additional rules for the specific protection of women.

Fourthly, it should also be emphasized that the study is in keeping with one of the fundamental principles of the ICRC, that of impartiality. This principle requires that the ICRC endeavour to assist and protect all victims of conflict or violence without discrimination and in accordance with their needs. To that end, the ICRC must be able to identify the specific needs and vulnerabilities of each category of victim in order to be able to reach, assist and protect them appropriately. This study is part of the process for ensuring that the ICRC is doing, and continues to do, just this.

The study was started in 1998 through the systematic collection of information for the period 1998 to 1999. ICRC field delegations were requested to provide periodic reports regarding activities carried out on behalf of women. Members of the ICRC Women and War project went on field missions to assess the approach of the delegations. Information was also gathered through the debriefing of personnel returning from the field and contacts with colleagues at headquarters, and from a review of internal documents. Furthermore, valuable information was provided by women affected by war themselves, in the context of the *People on War* project launched to mark the 50th anniversary of the Geneva Conventions. [93] Lastly, a wide range of material on women and armed conflict was gathered from external sources to complement and supplement information received from sources within the ICRC.

2. **Methodology**

The text has been constructed using a needs-based approach. The various needs have been grouped according to the predominant feature of each of them. However, there

are clear links or close associations between many of the categories. For example, some aspects of security concerns are linked to the question of access to food and water, so that at times the security aspect will be raised in other sections, but for brevity is dealt with mainly in the section entitled “Safety”.

Owing to its special nature, the question of detention – in which detainees are totally reliant on the detaining authority for all their needs and security – and the ICRC’s special mandate and extensive experience in relation to persons deprived of their liberty are dealt with in a separate chapter.

II.

Assessment of the needs
of the civilian population
with a focus on women

A.

Access of civilian population to assistance and protection

a) OVERVIEW OF PROBLEM

States have the responsibility to care for their citizens. As their needs are often not met, civilian populations in situations of armed conflict need to be able to reach and be reached by international humanitarian organizations. Unfortunately, international humanitarian organizations such as the ICRC are sometimes denied access to areas where and when the worst abuses against protected populations are taking place.

The central role of women in the family unit and the absence of male heads of households as a result of the armed conflict may mean that it is frequently women who seek assistance. When seeking assistance, women often face important obstacles, such as security problems, child-care needs, a lack of resources which hampers their mobility, lack of freedom of movement, etc. which can considerably limit their access to those who can provide help. These constraints can vary depending on the cultural context, the status of the woman in the community and the security situation prevailing in the region.

In some communities it is inappropriate for women to be in contact with men who are not part of their family. Furthermore, when women need to discuss more taboo or intimate issues such as menstruation, health and hygiene problems, and/or problems of ill-treatment such as sexual violence, they may prefer to speak with personnel who are likewise female.

b) REVIEW OF INTERNATIONAL LAW

If the population of a territory under the control of a party to the conflict is inadequately supplied with essential commodities like foodstuffs and medical supplies, the power in control must agree to and facilitate relief schemes. Such relief actions must be of an exclusively humanitarian and impartial nature and must be conducted without any adverse distinction.^[94] All States are required to allow and facilitate the rapid and unimpeded passage of relief consignments and personnel, even if such assistance is destined for the civilian population of the adverse party.^[95]

The Fourth Geneva Convention provides that protected persons must have every facility for making application to the ICRC, National Red Cross and Red Crescent Societies and any organization that may assist such persons.^[96] This is an individualized and absolute right to communicate on any issue, which is granted to all protected persons regardless of whether or not they are detained.^[97]

With regard to persons who have been deprived of their liberty for reasons related to an armed conflict, the Fourth Geneva Convention requires the Detaining Power to grant representatives of religious organizations, relief societies and other organizations assisting protected persons all facilities for visiting these persons and for distributing relief supplies and other material. The Conventions expressly require that the special position of the ICRC in this field be recognized and respected at all times.^[98] The Fourth Geneva Convention also expressly provides that the ICRC should be granted access to places where persons deprived of their liberty for reasons related to an armed conflict are detained.^[99]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC assists women where they are judged to be among the most vulnerable and in need of the assistance that it can provide. In some of the countries in which the ICRC works women are the least accessible members of the community; the ICRC endeavours to take this into consideration in the planning and implementation of its activities and strives to gain better access to women.

The ICRC does not have a specific policy for the composition of teams sent to carry out particular activities.

d) KEY POINTS

Access of the civilian population to assistance and protection provided by humanitarian organizations

1. In order to facilitate the access of women to humanitarian organizations, attention must be paid to such issues as the location of the organizations' premises, the presence of female personnel (local and expatriate), the repayment of travel costs of particularly vulnerable persons who come to the offices to make allegations, and allocating sufficient time in field missions to meet with and talk to women.
2. When carrying out their activities, organizations should take into consideration the fact that women are particularly susceptible to marginalization, poverty and the suffering engendered by a conflict situation, as well as being less accessible. All such factors have to be recognized and activities adapted to ensure that activities really meet the needs of women.
3. Whenever possible, it is recommended that the teams sent on assessment and evaluation missions and to carry out activities include both male and female personnel and field officers/interpreters. This will maximize the possibility of women approaching humanitarian organizations to discuss issues which affect them, including taboo and sensitive issues that normally they would not be able to discuss with a man.

4. In many settings it may be more appropriate for a woman to be interviewed by a woman. Women should be encouraged to share their experience in discussions, and should be given the possibility to express their and their families' needs during the assessment, implementation and evaluation of all humanitarian activities. This has to be done in a way that will not create any additional problem for the women.
5. Female members of humanitarian organizations are encouraged to actively seek out women to discuss issues with them, and if necessary to meet with them separately so that they can express themselves freely. This is particularly important where women are restricted in their contacts with men outside their families.

B. Safety

1. Personal safety

For the purposes of this study, personal safety is defined as safety from dangers, acts of violence or threats thereof against members of the civilian population not taking an active part in the hostilities, as well as those no longer taking part in hostilities (for example, captured combatants).^[100] Violence – physical and mental harm – and threats thereof may take many forms – including killings, summary and arbitrary executions, torture and mutilation, cruel, inhuman and degrading treatment, rape, forced prostitution, forced impregnation, forced termination of pregnancy and sterilization and other forms of sexual assault. The civilian population must also live free from ethnic cleansing, forced displacement, abduction, shielding from attack and hostage-taking, arbitrary detention, forced disappearances, trafficking, slavery – including sexual slavery – persecution, harassment, discrimination, and the deliberate spread of diseases such as HIV/AIDS as a means of warfare.

The civilian population needs to be protected against dangers arising from the conduct of hostilities and in particular to live free from acts which aim to spread terror, such as indiscriminate attacks. Certain weapons can also have a serious impact on the environment which in turn threatens the means of survival of the civilian population. The preservation of the environment and of public and private property necessary for the health and survival of the population is a necessity.

The civilian population must be free from threats or acts of violence committed against them by parties to an armed conflict, be it the military, armed groups or police. They also need protection from such acts committed by members of peacekeeping forces or by private individuals, such as members of political parties.

a) OVERVIEW OF PROBLEM

Gross violations of international humanitarian law regarding personal safety are frequently committed. These acts or threats can occur in all phases of a conflict, whether the victims remain within their homes or communities, whilst fleeing, whilst displaced, when returning, during periods of tension leading up to the conflict, during the conflict or after the conflict has ended. The fact that, generally, women do not go off to fight and largely remain unarmed and unprotected at a time when traditional forms of moral, community and institutional safeguards have disintegrated, and weapons have proliferated, leads to women's being particularly vulnerable in wartime. Women need to be protected from all such violations.

An ICRC study on arms and arms availability noted that “although [the ICRC study] does not suggest that arms availability alone is a cause of violations of humanitarian law or a deterioration of the situation of civilians, it indicates that the unregulated transfer of weapons and ammunition can increase tensions, heighten civilian casualties and prolong the duration of conflicts. (...) The current pattern of transfers of small arms, light weapons and related ammunition (...) should be a matter of urgent humanitarian concern”.^[101]

The proliferation of weapons and children's access to them gives children a power that they have never had before and has far-reaching consequences. “Older women report that rape by young boys is especially humiliating because traditionally Africans hold elders in high respect; but this morality is breaking down under the stress of war.”^[102] Weapons in the hands of new and often undisciplined fighters increase the threat to the civilian population. Simple tools like machetes have also been used in wars throughout the world to maim and kill. “I was holding my two-year-old boy and they killed him with an axe. I was crying, ‘Oh my baby!’ so they hit me on the head with a cutlass (machete). (...) After that, they asked me to put out my right hand on a stick on the ground, and they chopped at it.”^[103]

Women are also endangered by nuclear, biological and chemical weapons which can kill or maim, leaving survivors with serious damage to their health. As such weapons can cause genetic damage and can lead to malformations, they affect women's reproductive systems and threaten not only their own health but that of future generations. Women are also among the victims of anti-personnel mines and unexploded ordnance (see section on *Health*).

Armed conflict may dramatically increase the number of armed forces and weapons in an area populated by civilians, heightening tension and bringing the conflict close to civilians. Frequently in conflicts, soldiers are housed near to or even with the civilian population. Soldiers often lack the means for basic subsistence but may have access to alcohol and drugs. Women have also been forced to harbour and feed soldiers. For example, when they are billeted in areas populated by civilians without sufficient means for survival, soldiers often turn to the local population for “support”, taking food and supplies through intimidation. When this happens, women risk injury

as the war and weapons are brought to their homes and in addition they are exposed to the risk of reprisals by the opposing forces. It also places them in difficult and inappropriate situations: another mouth to feed with scant resources, and the personal safety of the whole family threatened.^[104]

Owing to the proximity of the fighting and/or the presence of arms bearers, women invariably have to restrict their movements; this severely limits their access to supplies of water and food and their ability to tend their animals and crops, to exchange news and information and to seek community or family support. Women are all too often harassed, intimidated and attacked in their homes, while moving about in and around their villages and when passing checkpoints.^[105] “Women are also vulnerable to attack or injury due to their culturally assigned roles, such as queuing for food or fetching firewood and water”.^[106] Such factors can create particular threats and difficulties for the civilian population, especially women, in the absence of male relatives. Women must be protected from abuse from the parties to an armed conflict and should be able to live without intimidation and the presence of soldiers lodged with them. Any form of violent intimidation carries with it the ever-present threat of sexual violence, thereby causing psychological stress that is different from the effects of the same intimidation on men.

There is often a perception among the civilian population in many countries that being female and/or being a child will afford you a greater measure of protection from the warring parties. Men and women often believe that a woman's *gender* – a socially constructed role – will protect her. This belief leads to families taking the decision that women – and often elderly women or women with children – should stay, for various reasons: to protect the family property and livelihood whilst the rest of the family flees or is absent; to care for elderly, young or sick family members who cannot flee as they are less mobile; to keep their children in school (as education is such an important factor for many families and their future); to visit and support family members in detention; to search for missing family members; and even to assess the level of insecurity and danger in order to decide whether it is safe for displaced family members to return. In addition, many communities may have a high number of elderly widows or sick and wounded who cannot flee as they are too frail or immobile or simply refuse to leave. In fact this perceived protection – that as a woman and especially as an elderly woman you will be safe – is rarely reflected in reality. On the contrary, women have been targeted precisely because they have stayed and/or because they are women.

Women need to be protected from violence, intimidation, or arbitrary detention perpetrated against them because of their actual or perceived role in the conflict and/or because they are the wives, mothers, daughters, or sisters of men whom the authorities want to arrest or question, or whose relatives are in detention or fighting. Women should not be persecuted because they are married to someone from another ethnic group.

Women must be protected from all forms of violence, whether perpetrated inside or outside the home. Some research has indicated that domestic violence may increase

owing to an armed conflict situation. There are many reasons for this. Tension increases within many communities, owing to deep political, religious or inter-ethnic divisions and to a worsening of the economic situation. An increase in domestic violence may also be associated with a combination of external circumstances resulting from conflict, for example, displacement, and the changing roles of men and women in the household during the war, combined with the high unemployment rate and use of alcohol among men. Conflicts generate a subculture of violence, one that condones violence and views violent behaviour as normal. Moreover, both men and women are traumatized by war, heightening family tension. Finally, during the prolonged wartime absence of men, some women become more independent and self-reliant. Some returning men resent that independence and resort to violence to assert their authority.^[107] The existence of a possible link between armed conflict and domestic violence is a field for further research.

b) REVIEW OF INTERNATIONAL LAW

1) **International humanitarian law**

One of the aims of international humanitarian law is to protect civilians from the effect of hostilities, therefore all the general principles outlined in the introduction are of relevance to the personal safety of female members of the civilian population. International humanitarian law safeguards the personal safety of women in situations of armed conflict in two principal ways: first it protects civilians from the effects of hostilities by regulating methods and means of warfare; and secondly it prohibits specific acts of violence by parties to the conflict.

i) Protection against the effects of hostilities

The first type of rules are those which afford women security against the effects of hostilities. They are based on the fact that women are members of the civilian population and are protected as such. The only legitimate aim of parties to a conflict is to weaken the military forces of the adversary, and they are under an obligation to conduct hostilities in such a way as to spare the civilian population as far as possible from the dangers arising from the hostilities. None of the rules in question refer to specific groups – such as women or children – within the civilian population.

- Principle of distinction – protection of civilians from attacks

As has been seen a fundamental rule of international humanitarian law is the principle of distinction, which requires parties to a conflict to distinguish between civilians and combatants at all times and not to direct attacks against civilians and the civilian population.^[108] International humanitarian law prohibits both attacks specifically directed against civilians and those of an indiscriminate nature which, although not intentionally targeting civilians, are of a nature to strike military objectives and

civilians or civilian objects without distinction.^[109] Also of relevance are the rules requiring parties to a conflict to take precautions during attacks in order to spare the civilian population.^[110]

Additional protection for civilians from the effect of hostilities is found in a number of other important rules. These include the prohibition on carrying out attacks on “works or installations containing dangerous forces”: dams, dykes and nuclear electrical generating stations, attacks on which may cause the release of dangerous forces and severe losses among the civilian population;^[111] the prohibition of attacks on the civilian population or civilians by way of reprisal;^[112] the prohibition of starvation of civilians as a method of warfare and the destruction of objects indispensable to the survival of the civilian population;^[113] and the prohibition of using the presence of the civilian population or individual civilians to render certain points immune from military operations.^[114]

Additional Protocol II, albeit in more condensed form, contains a similar prohibition on attacking civilians, and the same prohibitions on the starvation of a civilian population as a means of warfare and on attacks on works and installations containing dangerous forces.^[115]

- Prohibitions on the use of certain weapons

Also important for shielding civilians from the effects of hostilities are the rules prohibiting the use of certain weapons. These are weapons that are intrinsically indiscriminate or which can continue to cause injury long after their deployment. They include chemical and biological weapons as well as anti-personnel mines. The protection of civilians was at the forefront of the minds of those who drafted the 1997 Anti-personnel Mines Convention. In addition to prohibiting the deployment of such weapons, the Convention requires States to identify the areas within their control in which anti-personnel mines are known or suspected to be located and to fence off such areas to exclude civilians until such time as the mines have been destroyed.^[116] Only two instruments restricting or prohibiting the use of specific weapons are expressly applicable in non-international armed conflicts: Protocol II as amended in 1996 on Mines, Booby-Traps and Other Devices to the 1980 Convention on Certain Conventional Weapons, and the 1997 Anti-personnel Mines Convention.

- Individual criminal responsibility

As a final point, it should be noted that violation of a number of the prohibitions identified above constitute grave breaches of the Geneva Conventions and Additional Protocol I.^[117] Moreover, those violations as well as violations of prohibitions on the use of certain weapons are considered to be war crimes in the Statute of the ICC.^[118]

ii) *Humane treatment*

The second set of rules protecting the personal safety of women are those which require belligerents to ensure the humane treatment of all persons within their power.

This treatment, which must be guaranteed at all times, includes security of life and person and fundamental judicial guarantees.^[119]

International armed conflicts

Provisions requiring humane treatment, having laid down the fundamental rights to be granted to all persons, sometimes make special reference to women. For example, having required belligerents to treat protected persons humanely and to protect them against acts of violence, Article 27 of the Fourth Geneva Convention goes on to provide that “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any other form of indecent assault”.^[120]

This provision requires the relevant State to protect persons from such acts, presumably at the hands of its own forces, the other side in the conflict or private individuals. The rules prohibiting States themselves from carrying out such acts are laid down in other provisions, such as Article 32, which provides that parties to the conflict are prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Other provisions in the Fourth Geneva Convention lay down rules protecting personal safety in specific situations. These include the prohibition on the use of physical or moral coercion to obtain information from protected persons;^[121] the prohibition on reprisals, collective penalties and all measures of intimidation or of terrorism;^[122] and the prohibition on the taking of hostages.^[123]

Perhaps the most comprehensive statement of what constitutes the humane treatment that must be granted as a minimum to all persons in the control of a party to an international conflict is to be found in Article 75 of Additional Protocol I.^[124] This provides in part: “The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents: (a) violence to the life, health, or physical or mental well-being of persons, in particular: (i) murder; (ii) torture of all kinds, whether physical or mental; (iii) corporal punishment; and (iv) mutilation; (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form or indecent assault; (c) the taking of hostages; (d) collective punishments; and (e) threats to commit any of the foregoing acts”.

In addition to this extensive provision, Article 76 of Additional Protocol I lays down special measures of protection for women. It provides in part: “1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault. 2. Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to

the armed conflict, shall have their cases considered with the utmost priority. 3. To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women”.

Non-international armed conflicts

Once again, although not as detailed as the provisions applicable in international conflicts, there are a number of rules that ensure personal safety in situations of non-international armed conflict. Of fundamental importance is Article 3 common to the Geneva Conventions, which lays down minimum standards to be respected by both sides in a non-international armed conflict. It provides in part: “1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: a) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture; b) taking of hostages; c) outrages upon personal dignity, in particular, humiliating and degrading treatment; d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples”.

Important additional protection is provided by Additional Protocol II, Article 4 of which largely repeats the provisions on fundamental guarantees found in Article 75 of Additional Protocol I.^[125]

Individual criminal responsibility

The fundamental importance of the provisions ensuring humane treatment is highlighted by the fact that violations of these principles form the core group of grave breaches of the Geneva Conventions.^[126] This is reflected in the list of war crimes set out in the Statute of the International Criminal Court which, in addition to the grave breaches just mentioned, also expressly includes sexual violence, the taking of hostages, and the carrying out of executions without previous judgment ensuring fundamental judicial guarantees.^[127]

2) Protection in other bodies of law

In addition to international humanitarian law, other bodies of law, most notably human rights law but also, to a lesser extent, refugee law and general public international law, also protect the personal safety of persons in situations of armed conflict. The relevant rules are briefly reviewed below.

i) *Human rights law*

- General human rights instruments

Numerous principles of human rights law aim at protecting individuals' personal safety. They include, most notably, the right to life^[128] and the prohibition on cruel, inhuman and degrading treatment or punishment.^[129] Although the right to life in the various universal and regional conventions is not absolute – for example, the instruments do not prohibit the death penalty – States are under a duty both not to infringe this right themselves and to protect it from infringement by others. Moreover, it is important to note that the right to life and the prohibition on cruel, inhuman and degrading treatment are rights from which there can be no derogation, even in times of public emergency.

In addition to these “general” human rights instruments, there exist other more specific treaties which deal with particular rights. Of particular relevance are the instruments which provide additional protection in relation to the right to life and the prohibition of torture. With regard to the right to life, as mentioned above, none of the conventions actually prohibits the death penalty. Instead, this prohibition is usually included in specific optional protocols.^[130] Although these instruments aim to abolish the death penalty, they all contain an express exception allowing States to reserve the right to apply the death penalty in wartime for extremely serious crimes of a “military nature”.^[131]

Additional instruments have also been concluded on the subject of torture. These include the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 1985 Inter-American Convention to Prevent and Punish Torture. These instruments build upon the prohibitions on torture in the more general conventions by requiring States Parties to take effective legislative, administrative, judicial and other measures to prevent acts of torture and to prosecute or extradite persons suspected of torture.^[132]

Also of relevance are the instruments relating to enforced disappearances, such as the 1994 Inter-American Convention on the Forced Disappearance of Persons, and “soft law” instruments regulating the use of force, such as the Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly in 1979^[133] and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in 1990 by the eighth UN Congress on the Prevention of Crime and the Treatment of Offenders.^[134]

- Instruments focusing on women's rights

Of the conventions which focus specifically on women's rights, only the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women addresses the issue of physical safety. This instrument prohibits “conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere”.^[135] The Convention is very wide in scope, enshrining women's right to be free from violence,

whether it occurs within the family or within the community, or is perpetrated or condoned by the State or its agents.^[136] The Convention states that every woman is entitled *inter alia* to the following rights: The right to have her life respected; the right to have her physical, mental and moral integrity respected; the right to personal liberty and security; the right not to be subjected to torture; and the right to have the inherent dignity of her person respected and her family protected.^[137]

Reference should also be made to the non-binding Declaration on the Elimination of Violence against Women adopted by the UN General Assembly in 1993^[138] and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict adopted by the UN General Assembly in 1974.^[139] This latter Declaration brings together, with special reference to women and children in situations of emergency and armed conflict, the rules entitling these persons to protection under international humanitarian law and human rights law identified in the preceding pages. In particular, the Declaration calls upon States to refrain from carrying out attacks on the civilian population and from using chemical or bacteriological weapons, and to abide fully by their obligations under the 1925 Geneva Gas Protocol and the 1949 Geneva Conventions. It prohibits all forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests and collective punishment.^[140]

ii) Refugee law

Refugee law also protects women's right to personal safety. Firstly, the principle of *non-refoulement*, which also finds expression in the Fourth Geneva Convention and which prevents States from sending persons to a place where they will face a risk of persecution, provides very immediate personal safety. Secondly, the very definitions of a refugee in the relevant international instruments, which mention fear of persecution for a number of specific reasons, are based on the need to flee from violations of, or threats to, the right to personal safety.^[141] The link between refugee status and the protection of personal safety is even more apparent in the more recent instruments, such as the 1969 OAU Convention or the 1984 Cartagena Declaration, which extend the definition of "refugee" to include persons who have left their State of origin owing to external aggression, occupation, internal conflict or large-scale violations of human rights.^[142]

An important development in the field of refugee law is the increasing tendency to recognize persecution specifically aimed at women as grounds for entitlement to refugee status.^[143] For example, in 1995 a US court granted asylum to a woman from Sierra Leone who had been the victim of a cycle of ongoing physical and verbal domestic abuse.^[144]

iii) Other bodies of law

The international instruments which enshrine the right to personal safety are numerous and cannot all be listed here. However, a final document that must be mentioned

is the 1948 Convention on the Prevention and Punishment of Genocide. Although it does not *specifically* mention acts committed against women, this instrument is of crucial importance. It provides that genocide, whether committed in time of peace or of war, is a crime under international law which States must prevent and punish.^[145] Article 2 defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group”.

c) THE ICRC'S OPERATIONAL RESPONSE

See below in section on *Sexual violence*.

d) KEY POINTS

See below in section on *Sexual violence*.

2. **Sexual violence**

a) OVERVIEW OF PROBLEM

“The social stigmas, cultural or religious attitudes, emotional traumas, physical abuses, reproductive manipulations, and historical impunities have made sexual assault an extremely effective weapon of war and destruction. Further, the deterioration or collapse of protective police and legal systems, the confusion and turmoil prevalent in war, the expectant ruthless brutality of war, the multiple conflicts inherent within the psychology of battle, and the wartime practices of retaliation and reprisals each provide endless opportunities and incentives for sexual assault.”^[146]

Women need to be protected from all forms of sexual violence, or threats thereof. While both men and women can be subjected to sexual violence, it is women and girls who are predominantly affected by rape, forced prostitution and sexual slavery. Forced impregnation, forced maternity and forced termination of pregnancy are specific violations that uniquely affect women and girls. Women may also be forcibly sterilized.

There are numerous factors, many of them outlined previously, which increase the risks for women and girls, especially unaccompanied women or households headed by

women, of becoming victims of sexual violence in situations of armed conflict^[147] or internal disturbances.^[148] Furthermore, the fact that many women in armed conflict situations are held up by the community as symbolic and the bearers of the community's honour heightens their vulnerability. "The holding up of women as symbolic bearers of caste, ethnic or national identity can expose them to the risk of attack. The widespread occurrence of rape in times of conflict has attracted particular attention and has been seen as directly related to the position of women in communities as bearers of cultural identity. The rape of women in conflict situations is intended not only as violence against women, but as an act of aggression against a nation or community."^[149]

Sexual violence is a particularly brutal act. During the ICRC *People on War* project undertaken in 1999 in countries which had been, or were still, at war, one in nine of all respondents reported that they knew somebody who had been raped, and nearly as many reported that they knew somebody who had been sexually assaulted.^[150] When asked to recall their memories of war, the women's answers were dominated by specific cases of rape.

Sexual violence has been used against women or members of their families as a form of torture, to injure, to extract information, to degrade and intimidate, and as punishment for actual or alleged actions. It has also been used as a means of "ethnically cleansing" an area, of spreading fear and compelling people to leave an area, and through widespread and systematic rape and forced impregnation aimed at destroying the identity of an ethnic group. Sexual violence has also been committed in particularly sadistic ways – in front of family members, including children, with malicious injuries, e.g. slashing of breasts. Such methods have indeed been used on both women and men. Some women do not survive the sexual violence committed against them, but no statistics are available on such fatalities.

Rape and other forms of sexual violence have often been regarded as a "by-product" of war, either as a reward for soldiers or civilians or because of the breakdown of traditional and/or institutional mechanisms for preventing its occurrence.^[151] The fact that rape has – wrongly – been viewed by some as an inevitable part of war may have contributed to its becoming a regular and particularly cruel means of attacking women. The often public manner in which sexual violence is inflicted on its victims implies that the perpetrators believe their actions will be condoned or consider themselves immune from accountability. Furthermore, women may be unable or afraid to report such violations because national institutions have broken down or because doing so may endanger women further. In many cultures, the "shame" associated with rape is in a social sense perceived as even worse than the physical act itself.

In these last years, several studies on sexual violence in wartime have been undertaken, for example a United Nations Population Fund (UNFPA) study in camps for Kosovan refugees^[152] and a Ministry of Health, UNICEF and UNFPA study in the Republic of the Congo.^[153]

In recent armed conflicts, it has frequently been reported that specifically and systematically targeting women has been used as a method of warfare. It has also been

reported that sexual violence has been used as a means of dishonouring the opponent. “Rape and sexual violence has (*sic*) been used to assert dominance over your enemy. Since women’s sexuality is seen as being under the protection of the men of the community, its defilement is an act of domination asserting power over the males of the other community or group that is under attack.”^[154]

Women who fear, or have been subjected to, sexual violence may seek alliances, especially through sexual relations, with members of the armed forces as a means of obtaining protection or assistance. Women need to be protected from having to seek such alliances as their only means of security. In one of its surveys, the ICRC found that soldiers had asked women for sex, offering little money or a tin of sardines in return. The women often sought such alliances as a means of securing protection and assistance for themselves and their families, preferring to have one man who would offer them protection and assistance than risking being subjected to repeated violations by many men.

Women should not be subjected to abuse or violence committed by parties to an armed conflict or by forces sent to protect or enforce peace agreements. Reports relating to recent peacekeeping operations have cited incidents ranging from harassment to beatings, rape, sexual exploitation, murder or general discrimination against local women and children. There have been reports containing allegations of rape and sexual harassment by peacekeepers, as well as alleged complicity in sexual abuse perpetrated by parties to the conflict.^[155] These abuses are reportedly concurrent with the arrival of peacekeeping troops, as is a sharp increase in prostitution (including child prostitution). A UN study on children and war (1996) reported that in six of the 12 countries which had been studied: “The arrival of peacekeeping troops has been associated with a rapid rise in child prostitution.” In Mozambique in 1992, for example, “United Nations Observer Mission soldiers recruited girls aged 12 to 18 years into prostitution”.^[156]

Peacekeeping and peace-enforcement personnel, like other arms bearers, and humanitarian workers must receive instruction and training in international humanitarian law and human rights law, with specific reference to the protection of women and children, and must comply with these laws. To date, this responsibility has lain with the national authorities sending the troops and not all countries are equally cautious and thorough in the training they give on the matter. The ICRC also gives instruction in international humanitarian law to peacekeeping forces in many countries.

Questions have been raised regarding the extent to which the United Nations and other peacekeeping forces are bound by the provisions of international humanitarian law.^[157] The ICRC has consistently argued for a broad approach, and regards international humanitarian law as applicable when UN contingents resort to force, whether in peacekeeping or peace-enforcement operations. In 1999, the UN Secretary-General officially promulgated a Bulletin on the “Observance by United Nations forces of international humanitarian law”. In its first section it states: “The fundamental principles and rules of international humanitarian law (...) are applicable

to United Nations forces” conducting operations under United Nations command and control.^[158] This UN Bulletin specifically prohibits “rape; enforced prostitution; any form of sexual assault and humiliation and degrading treatment; enslavement”.^[159]

Women need to have confidence in the forces present to protect them. Evaluations of peacekeeping missions have often revealed that teams made up of both women and men have proven more effective than teams comprising few women or none at all.^[160] However, despite such evidence suggesting that the presence of women in peacekeeping operations helps to create good relations with local communities, and that women refugees would prefer to discuss their experiences with women soldiers rather than male soldiers, the inclusion of women in military, police and civilian components of peacekeeping operations is minimal.^[161]

When women or girls have been subjected to sexual violence they need both protection (to prevent it from happening again) and appropriate assistance to treat any physical and psychological consequences. Women and girls face the risks of sexually transmitted diseases, physical trauma or sometimes even mutilation, pregnancy, miscarriage, menstrual problems and psychological trauma, injuries or infections and mental health problems.

Where rape results in pregnancy, women need support to deal with the physical and social repercussions. Some may wish to terminate the pregnancy or may be forced to do so by their families or communities or by necessity. This practice may be illegal or culturally unacceptable in some communities or countries. Women may find that they are forced to conceal their pregnancy or may attempt to carry out self-induced abortion or to commit suicide, as they are afraid or reluctant to seek medical help. There are many factors that contribute to this fear.

Survivors of rape or sexual violence may face further problems such as ostracism or retribution (in addition, the perpetrators may have told them that if they report the violation they, or their families, will be subjected to further violence). This is especially the case in very traditional or patriarchal communities, where importance is placed on the purity and chastity of women; unmarried women and girls may no longer be considered worthy of marriage by their families and community and married women may be rejected by their husbands and families. Furthermore, survivors of sexual violence in some societies may also risk being accused of adultery, prostitution and/or bringing dishonour on the family – and these are seen as crimes which may be punishable by imprisonment and/or the death penalty. “In addition to causing personal physical and mental suffering, rape may be perceived to bring dishonour to the woman and result in marginalization of both her and her family. Its systematic use can result in the destruction of the social fabric of the persecuted group. Too often, rape victims cannot receive adequate medical services in emergencies, unless there is an immediate lifesaving response required. The approach taken with rape victims must be sensitive to their social and religious background, the specific skills for which may be hard to identify in emergencies.”^[162]

In recent years, various psychosocial programmes have been set up by international organizations and NGOs to assist women survivors of rape, primarily in Bosnia-Herzegovina and Kosovo, but also in other countries such as Rwanda. Initial evaluations of some of the projects have highlighted the fact that many of these programmes have employed personnel and techniques from Western countries which have not been appropriately adapted to local cultures, customs and – most importantly – the situation of women survivors of wartime rape (which is often systematic, widespread and may involve multiple abuse).^[163] It was reported that a rigid application of the post traumatic stress disorder concept (PTSD) was frequently inadequate where rape survivors were not in a “post-traumatic stage” but rather in an “ongoing” traumatic situation as they were still living in a community where the violations or conflict situations were continuing or unresolved. Furthermore, such programmes often risk further isolating women survivors of rape from their communities by the very fact that they have had to be identified as rape victims in order to meet the criteria for assistance.^[164] Thus, women often choose not to take part in such programmes. The UNFPA study on Kosovo refers to an incident in which newly arrived female refugees were gathered together and publicly asked to come forward if they had been raped. “Last week a male humanitarian staff member of an international organization in a camp set up in a sports center in Tirana used a loudspeaker to invite any women who were victims of violence to come up to him and obtain a questionnaire.” Not surprisingly, only two volunteered to be identified in this manner.^[165] Assistance must also be able to reach victims of sexual violence who have not fled conflict – and are not in a camp for the displaced, where arguably assistance is easier to deliver. Those that remain *in situ*, in their families and communities, are much harder to identify, protect and assist. Furthermore, the criteria for assistance may exclude others who are also in need of assistance, for example, ex-detainees (both female and male) who have been subjected to ill-treatment in detention.

1) Honour

“Women could be raped, impregnated with the seed of the other religion, and in this way not only would they be rendered impure individually, but the entire community would be polluted and the purity of the race diluted.”^[166]

In many societies the concept of womanhood is embodied by a woman’s purity and chastity if she is unmarried or by her monogamous relationship with her husband if she is married. A woman’s “honour” is frequently linked to her sexual purity and chastity, and a relationship with another man – even a non-consensual one through rape – may be considered as dishonouring her and her family. Honour is a code by which many men and women are raised and by which they define and lead their lives; it is thus a complex concept in many communities.

Women should be protected against all acts of violence – they need protection for their physical and psychological integrity, including their dignity and honour. In recent years, the plight of women subjected to brutal and inhuman treatment, including

injury, imprisonment and death, because of crimes of honour not related to armed conflict, has been highlighted.^[167] Women have been subjected to such treatment by their family or community because they are believed to have brought dishonour on their family by having an illicit relationship with a man outside marriage.

During situations of armed conflict it can be this very honour of women which is targeted as a means of attacking the enemy. “In many countries sexual violence is seen as a crime of honour, an act against the community, not the physical integrity of the individual victim. (...) It is this aspect that is at the core of an understanding of violence against women in armed conflict that involves ethnic, religious or linguistic conflict among groups.”^[168]

2) Children born of sexual violence

Children born as a result of sexual violence need to be raised free from neglect, discrimination and ostracism. In recent years some academics have raised concerns that in the debate over rape as an atrocity committed against women in war, the fate of the children born of rape has been neglected.^[169] Furthermore, it is contended that the ostracism of children born as a result of their mother’s rape and carrying the pregnancy to term and the presumed patrilineal ethnicity of the baby have not been studied from the perspective of the child but only from that of the mother.^[170] The fate of these children needs to be researched and appropriate assistance and protection provided them.

3) Trafficking

Women, men, and children can all become victims of trafficking,^[171] although in past years the notion of trafficking has become more associated with sexual slavery^[172] and forced prostitution of women. The UN estimates that about 4 million people are affected by this practice every year. Trafficking in girls under the age of 18, mostly for prostitution, accounts for approximately 30% of total trafficking. Boys under 18 years account for a very small fraction, approximately 2%, of trafficking, mainly for slavery.^[173]

The notions of abduction, trafficking and (sexual) slavery are all interrelated and may be linked, although not exclusively, to armed conflict. Trafficking may increase in a situation of conflict owing both to the breakdown of political, economic and social structures and to increased militarization. The breakdown in public and private structures increases the supply of potential victims, and thus women in armed conflict situations are particularly at risk of falling prey to traffickers.

Women made vulnerable by war are frequently abducted from or coerced to leave refugee camps or tricked by traffickers when in search of employment.^[174] This often occurs in countries where poverty and the collapse of governmental protective mechanisms force young women to seek “help” – which leads them to sexual slave traders. This is exacerbated in cases of conflict. For example, it has been alleged by UNHCR that the massive displacement of civilians as a consequence of the armed conflict in Kosovo and the confusion that followed this exodus was used by some as an opportunity to

target Kosovo women and minors in Albania for adoption or employment in the sex industry.^[175] Sexual slavery does not necessarily involve trafficking, although it may be a result of the latter. Sexual slavery does encompass forced prostitution in most of its forms. Like rape, it is often used as a means of warfare in armed conflict, when women are the repository of a family's honour or of ethnic or tribal identity. Thus sexual slavery, like rape, may represent a systematic attack on the civilian population in order to destroy the community.

Examples of sexual slavery during armed conflict are abundant. For instance, in the report of Ms Gay McDougall, UN Special Rapporteur, it is alleged that some armed groups continue their practice of abducting children and using them as sexual slaves, and that girls as young as 12 are given to commanders as "wives".^[176] Furthermore, in a mission undertaken by the UN Special Rapporteur and United Nations High Commissioner for Human Rights (UNHCHR), a number of teenage girls reported having been subjected to sexual violence.^[177] Abductees are also forced to perform camp duties such as washing and cooking, providing health care, etc.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

Sexual violence is expressly referred to only in a limited manner in the Geneva Conventions and only marginally more often in the Additional Protocols. However, recent interpretations and the application of other provisions by the ad hoc Tribunals for the former Yugoslavia and Rwanda have confirmed that sexual violence is covered by the rules concerning torture and inhuman and degrading treatment.^[178] The present section will focus only on the provisions dealing expressly with sexual violence, and it should be borne in mind that all the rules set out above concerning personal safety (see section on *Safety*) are also relevant.

International armed conflicts

Article 27 of the Fourth Geneva Convention provides that "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault". While important in that it highlights the special obligation on parties to a conflict to prevent sexual violence against women, the approach adopted over 50 years ago gives the impression that the sexual offences listed are stigmatized because they are intrusions against a woman's "honour" rather than attacks against her physical and psychological well-being. However, it can be argued that rape is encompassed in "wilfully causing great suffering or serious injury to body or health", listed as a grave breach in Article 147 of the Fourth Geneva Convention. As will be seen, this connection between sexual offences and a woman's honour has been abandoned in more recent instruments.

While the previous provision is phrased in terms of protection from sexual violence, Additional Protocol I expressly lays down a prohibition on such acts. Article 75 on fundamental guarantees – addressed to both military agents and civilians – prohibits “outrages against personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault”;^[179] while Article 76, which deals specifically with the protection of women, states that “women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault”.^[180] Sexual violence is also expressly referred to in the provisions granting special protection to children, which provide that “children shall be the object of special respect and shall be protected against any form of indecent assault”.^[181]

Non-international armed conflicts

Additional Protocol II repeats the prohibition of “outrages against personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault”.^[182] In addition to these express rules, a prohibition on sexual violence is implicit in the provisions of international humanitarian law which prohibit violence to life, including cruel treatment and torture and outrages upon personal dignity, and which are applicable in both international and non-international armed conflicts.^[183]

Individual criminal responsibility

The issue of sexual violence and its regulation by international humanitarian law has been the subject of important developments in recent years. Acts of sexual violence were not expressly included in the list of grave breaches of the Geneva Conventions and Additional Protocol I, although, of course, there is no doubt that they fall within the scope of “wilfully causing great suffering or serious injury to body or health”, torture or inhumane treatment, which are grave breaches.^[184] Acts of sexual violence are, however, expressly included as self-standing crimes in the Statutes of the ad hoc Tribunals and of the International Criminal Court.

Thus, the Statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) consider rape a crime against humanity.^[185] The Statute of the ICTR includes “outrages against personal dignity and in particular, rape, enforced prostitution and any form of indecent assault” as violations of common Article 3 and of Additional Protocol II over which the Tribunal has jurisdiction.^[186]

The jurisprudence of the ICTY has also recognized that rape or other acts of sexual violence may be subsumed under torture or outrages upon personal dignity, in particular humiliating and degrading treatment, committed in armed conflicts – international or non-international – which are violations of the laws and customs of war (i.e. Article 3 common to the Geneva Conventions), over which the Tribunal also has jurisdiction.^[187]

The Statute of the International Criminal Court expands the number of specific sexual crimes considerably. Thus, in addition to including “measures intended to prevent births within a group” as a form of genocide in line with the 1948 Genocide Convention, Article 7 of the Statute designates “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” as crimes against humanity.^[188] The war crimes over which the ICC will have jurisdiction include “rape, sexual slavery, enforced prostitution, forced pregnancy (...) enforced sterilization, or any other form of sexual violence” when committed in international or non-international armed conflicts.^[189]

The ICTR’s ruling in the *Akayesu* case was the first time an international criminal tribunal has tried and convicted a person accused of international crimes of sexual violence. Importantly, rape was defined in international law for the first time as “a physical invasion of a sexual nature committed on a person under circumstances which are coercive”.^[190] This approach emphasizes the fact that both women and men can be the victims of rape.

Also of relevance is the ruling by the ICTY in the *Foca* case concerning the holding of women in “rape camps” in 1992-1993. This was the first trial focusing exclusively on systematic sexual violence perpetrated against women in an armed conflict. In this case the ICTY held that rape had been used as an instrument of terror by the armed forces and found the three defendants guilty of rape and torture as war crimes and crimes against humanity, and of enslavement as a crime against humanity.^[191]

Significant developments with regard to accountability and implementation have also taken place at national level.

2) Other bodies of law

Although numerous human rights instruments deal with violence against women in general – including the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the 1974 Declaration on the Protection of Women and Children in Emergency and Armed Conflict and the 1993 UN Declaration on the Elimination of Violence against Women – express references to sexual offences and violence are more limited. The Inter-American Convention expressly covers physical, sexual and psychological violence and is very wide in scope, covering violence that occurs within the family or the community or that is perpetrated or condoned by the State or its agents.^[192] As mentioned at the outset, even though this may not be expressly stated in each instrument, sexual violence obviously falls within the prohibitions on torture and cruel, inhuman and degrading treatment in the other human rights instruments.

Additionally, sexual offences and sexual violence are specifically addressed in the Convention on the Rights of the Child, which requires States Parties to protect children from all forms of sexual exploitation and sexual abuse.^[193]

Sexual violence is also of relevance in other areas of law. For example, while not expressly included in the grounds for persecution giving entitlement to refugee status,

as indicated in the preceding section, in recent years both UNHCR's Executive Committee and the courts of certain States have declared that gender-based persecution could constitute such grounds. With regard to sexual violence specifically, the UNHCR Guidelines on the Protection of Refugee Women state that sexual violence against women is a form of persecution when it is used by or with the consent or acquiescence of those acting in an official capacity to intimidate or punish.^[194] Furthermore, in a number of cases national courts have considered sexual violence as amounting to persecution.

Finally, the 1948 Genocide Convention includes "imposing measures intended to prevent births within a group" among the list of acts which, if accompanied by the necessary intent to destroy that group in whole or in part, may amount to genocide.^[195]

3) A specific problem: trafficking

Trafficking of persons has been defined as the "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".^[196]

Recent years have witnessed numerous initiatives by the international community to combat trafficking. The complex nature of trafficking – the fact it is ordinarily carried out by private individuals across a number of jurisdictions – requires an extensive and specific legal framework covering activities in different countries in order to effectively combat the phenomenon.

International humanitarian law is silent on the specific issue of trafficking. However, the prohibitions of slavery and enforced prostitution in situations of armed conflict under this body of law are of relevance.^[197] Violations of these prohibitions when carried out by parties to an armed conflict in the territory of States affected by the conflict constitute war crimes under the ICC Statute when committed in international or non-international armed conflicts.^[198] However, trafficking is generally carried out by private individuals and across international borders and is usually unrelated to – although often exacerbated by – armed conflict, so it cannot automatically be considered to be covered by the prohibitions under international humanitarian law.

When committed as part of a widespread or systematic attack directed against the civilian population, sexual slavery is a crime against humanity under the ICC Statute.^[199] This is of particular relevance to the issue of trafficking as, unlike war crimes, crimes against humanity can be committed both in time of armed conflict and peacetime.

The fact that, as mentioned, trafficking is usually carried out by private individuals and not by the State means that human rights norms are not directly applicable,

although, of course, the failure of a State to combat trafficking could be seen as a violation of the prohibition against cruel, inhuman and degrading treatment. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires States Parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.^[200]

Recognizing that existing legal frameworks are inappropriate for responding to trafficking, in the year 2000 the General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention against Transnational Organized Crime.^[201] The Protocol defines trafficking and requires States Parties to the Convention to criminalize such behaviour under their national criminal laws.^[202]

Mention should also be made of the instrument entitled “Human Rights Standards for the Treatment of Trafficked Persons” developed by the Human Rights Caucus of the International Human Rights Group and a number of NGOs and distributed by the Office for Democratic Institutions and Human Rights of the OSCE.^[203]

Despite these efforts, most States still lack specific anti-trafficking laws and have to combat the problem by relying on laws relating to the exploitation of prostitution or immigration laws.

c) THE ICRC’S OPERATIONAL RESPONSE

1) Protection activities

ICRC protection activities aim at protecting people caught up in an armed conflict or internal disturbances from the dangers, abuses and suffering to which they are exposed in order to preserve their rights, offer support and ensure that they are heard.

ICRC delegates visit or are visited by victims of violations or their family members and confidentially record their testimonies. With the agreement of the victim or person giving the account, this information is passed on to the relevant authorities by the ICRC with a request that they put an end to such violations or investigate the allegation. The ICRC endeavours to carry out follow-up visits to victims of violations^[204] to ensure that they have not suffered as a result of any ICRC intervention on their behalf and to assess whether ICRC representations have improved the situation. Sometimes victims of violations or their family members fear interventions being made on their behalf but just want the ICRC to be aware of what is happening to them.

The ICRC traditionally makes representations in two types of cases: the conduct of hostilities and the respect shown by the parties to the armed conflict for persons protected by international humanitarian law. It seeks to establish a dialogue at the different levels of authority to make the protective norms understood, and recommends ways of having them effectively respected. Representations can also take the form of

public appeals of a general nature at the beginning of an armed conflict, reminding the parties of their obligations under international humanitarian law towards protected persons, or specific approaches of a confidential nature made directly to the parties to the conflict. Furthermore, the ICRC also makes public appeals at international forums to try to improve the protection of victims of armed conflicts: for example, at the 27th International Conference, the Plan of Action called for “full compliance by all the parties to an armed conflict with their obligations under international humanitarian law to protect and assist the civilian population and other victims of the conflict...”.^[205]

The ICRC endeavours to spread knowledge of international humanitarian law, humanitarian principles and its own role among all parties to an armed conflict, and also among members of peacekeeping or peace-enforcement missions. A review of ICRC dissemination messages relating to the protection of women has led the ICRC to become more vigilant in its dissemination activities regarding the protection of women and sexual violence.

2) Assistance to victims of sexual violence

Although the ICRC is faced with many constraints in trying to reach victims of violations – lack of access to certain areas of the country where it operates, difficulties in obtaining precise and direct allegations, etc. – it has been able to help victims of sexual violence in several ways, which vary from one context to another. Medical delegates have, for example, carried out medical examinations of rape victims to check for sexually transmitted diseases and pregnancy, and tried to ensure that these women are followed up by female nurses. Delegates have referred rape victims to gynaecologists for medical check-ups or to psychologists for counselling. The ICRC has paid for these medical expenses. It has also referred rape victims to groups specialized in assisting them. Furthermore, the ICRC has been involved in some programmes providing psycho-social assistance to victims of sexual violence. It needs to evaluate these programmes further to assess any future role in this field. Programmes for psycho-social assistance should not undermine a community’s or a person’s own coping mechanisms and should recognize that healing methods in one community may be completely different from healing methods in another. In short, initiatives have been taken, but much remains to be done by humanitarian organizations to alleviate the suffering of victims of sexual violence, both women and men.

d) KEY POINTS

1. Violations against the civilian population are often considered as non-gender-specific and are therefore monitored and dealt with in similar ways. However, civilians – men and women, adults and children – are invariably not treated similarly. It is therefore necessary to increase understanding of how security is different for men and women, girls and boys, in each situation, in order to learn of violations against specific groups.

2. It must be clearly stated that the physical and psychological integrity and dignity of women must be protected. The Geneva Conventions and their Additional Protocols afford this protection to women. In order to strengthen such protection, this part of the law must be emphasized, disseminated and enforced during situations of armed conflict. [206]
3. Prohibitions of rape and other forms of sexual violence must be included in national law and in the military codes and training manuals of arms bearers. Breaches of this law and of instructions given to arms bearers must be appropriately punished. Rape is preventable; this must be recognized and realized.
4. Women should not be automatically assigned the label “vulnerable” and should not be placed in the same group as children. Certainly, it is clear that children are vulnerable and form a distinct group which is protected under international humanitarian law and should not be involved in combat roles. But for women this distinction is not clear – primarily because they can take on a role in the armed forces and therefore are not necessarily “vulnerable”. Systematically linking “women and children” as one homogenous group should be avoided as they are obviously not the same and have different needs and capacities. One of the first priorities is to make specific and consistent reference in combatants’ training manuals to the protection (including protection from sexual violence) of women in different roles, such as female combatants, women encountering a group of soldiers at a check-point, etc.
5. Victims of rape and sexual violence need rapid access to appropriate and adequate health care (including pre- and post-natal care for those who have become pregnant) and trauma counselling. Appropriate medicines and medical care have to be provided for the treatment of injuries and diseases and special medical assistance (pre- and post-natal care) available to pregnant women victims of rape and babies born as a result of rape. Furthermore, in order to avoid ostracism or punishment, victims need an appropriate environment in which to relate and report their experiences. Their situation needs to be handled confidentially and sensitively, taking into account their cultural background, preferably by trained female staff, including interpreters.
6. There must be a strengthened capacity for monitoring violations of international humanitarian law involving women, through better fact-finding and reporting techniques. This should include, wherever possible, the use of female protection personnel, medical personnel and interpreters during interviews and their follow-up. Staff members should be trained in culturally appropriate listening skills and interview techniques (and, where appropriate, culturally sensitive trauma counselling).
7. Women may go to hospitals, midwives, traditional birth attendants, clinics, women’s groups, etc. for medical assistance for sexually transmitted diseases, pregnancy testing, termination of pregnancy, miscarriages, etc. These facilities/groups should be regularly visited by humanitarian organizations to gather information about violations and

to assess whether assistance and protection are needed. Assistance for the development and support of traditional methods of community healing should be given as a step towards appropriate assistance for survivors of sexual violence. Such programmes are less likely to stigmatize and endanger women further.

8. Female personnel and interpreters should be accessible in case a female victim prefers to talk with a woman. All personnel should be aware of this potential need, and know how to talk in a sensitive manner with female victims of violations. Efforts should be made to ensure that women have access to and feel confident about approaching and reporting violations to organizations.
9. For those who flee to camps for displaced persons, a significant reduction of exposure to rape and other violations can result from practical measures, for example: involving female security officers in the patrolling of camps; appropriate fencing and lighting to deter night raids; appropriate location of sanitary facilities limiting women's exposure to abuse; provision of food which needs limited cooking; and types of heating and cooking stoves which reduce the need to collect firewood outside the camps, so reducing the risk of injury or attack.
10. In the field of dissemination of humanitarian law, efforts should be made:
 - to improve and increase dissemination of the rules concerning the protection of women among parties to an armed conflict and peacekeeping forces. Publications should systematically include references to women as well as to men in various roles. This reflects the reality that women are often active members of the military, are taken prisoner, etc. The juxtaposition of men as fighters and women as civilians, both in text and photos, fails to recognize the danger to which male members of the civilian population are exposed and the role that women play in the military.
 - to spread the knowledge that sexual violence, a violation affecting both men and women, adults and children, is prohibited at all times, while emphasizing that it is the perpetrator of sexual violence that is dishonoured rather than the victim, or his/her family.
 - where appropriate, also to target for dissemination women as members of women's groups and "grassroots organizations", in order to increase their knowledge of the protection for women afforded by law. This is also a potential means of reaching family members in the armed forces who may be less accessible for dissemination sessions.
11. Rape has been used as a means or method of warfare. There has not been a comprehensive analysis of the impact of rape in armed conflict on survivors, although several individual studies have been carried out in the last few years in specific countries. Most of the literature written has analysed the legal mechanisms – and their supposed or alleged deficiencies – for achieving justice for women victims of rape. There is a lack of data and global studies on the needs of victims/survivors of sexual violence in wartime, e.g. culturally appropriate treatment for trauma, support for local methods of healing. Thus more research needs to be carried out.

12. More research needs to be carried out to explore the links between a rise in tensions (pre-conflict) and domestic violence against women, as well as what happens to these women if conflict breaks out.
13. There are no studies that examine the situation of male victims of sexual violence in armed conflicts; research on this issue should be carried out.
14. Research needs to be carried out on the fate of children born as a result of rape in armed conflict and ways of providing appropriate assistance and protection.

3. **Freedom from arbitrary displacement**

a) OVERVIEW OF PROBLEM

The civilian population is often caught up in the midst of an armed conflict or targeted as part of a deliberate military strategy by the parties to the conflict. Civilians have been compelled to leave their homes and possessions by warring parties, through fear of attack, as part of a campaign of ethnic cleansing, or as “human shields” to protect advancing or retreating armies. As members of the civilian population, women need to live free from forced displacement and relocation, i.e. not be forced to become internally displaced persons or refugees and be able to remain safely in their homes, families and communities. Displacement ironically often leads to separation from family members.

Women and children make up the majority of the world’s IDPs and refugees.^[207] It is frequently stated that women and children account for up to 80% of the population of refugee camps, prompting the conclusion that they flee because of their specific vulnerabilities, because they are targeted or because they fear attack.^[208] A further reason for camps of internally displaced persons and refugees being predominantly inhabited by women and children could be the fact that women and children have “the option or ability to flee”, whereas men are with the troops as soldiers or fighters. For example, “another important application of the gender variable to ethnic conflict in ex-Yugoslavia: the extent to which males have been denied the opportunity to flee war zones and claim refugee status.(...) The ‘women and children first’ rule seems as operative among besieged populations as it once was for ocean-liner passengers abandoning ship”.^[209]

That being said, it may be harder for women to flee the fighting if they have babies and small children. “It was daytime and we tried to run away, but I was unlucky and was captured.(...) I was holding my two-year-old boy.”^[210]

In a large number of countries affected by armed conflict the civilian population is highly dependent on its land as a source of livelihood, so displacement and the loss of this livelihood can have life-threatening implications. Separation from one’s community, which often provides essential support and protection, may have particularly

serious consequences. Remaining in one's home and preserving community ties is therefore particularly important as a means of coping with insecurity and stress. People moving from urban to rural areas or vice versa may also find particular difficulties in adapting to a different lifestyle, which requires skills and experience they do not possess. Displacement may well force women to become reliant on support from the local population in the area to which they are displaced, or on assistance from international and non-governmental organizations.

Women who are victims of displacement often have to travel long distances in their search for water, food and firewood, and for traditional foods and herbs for medicines, as well as medical care for themselves and their families. During such expeditions women frequently risk attack or injury from fighting, mines and unexploded ordnance, and sexual abuse, especially rape.

Refugee or internally displaced women often lack any control over matters traditionally within their domain, such as the provision of food and health care. Yet, in displacement, women have primary responsibility for trying to restore or maintain survival of the family unit. There are many examples of inappropriate assistance or conditions for women in camps for internally displaced persons or refugees: the provision in Tanzania of bright orange tents for single women (which was meant for their protection but which led to their being easily identified and to an increase in the incidence of rape);^[211] the location of latrines in a place which meant that women had to walk through the whole camp to use the toilet, carrying water to clean themselves afterwards and so alerting everyone in the vicinity to where they were going; women being unable to use washing and bathing facilities because they were in the same location as that of the men, thus violating cultural and privacy norms;^[212] and women being raped and abused when they left the camps in search of firewood for cooking and heating.^[213]

Women in situations of displacement need privacy in order to maintain their personal hygiene and dignity.^[214] Women and girls of menstruating age also need supplies of culturally appropriate sanitary material, as they often flee without the possibility of taking such supplies with them.

Women with children are also particularly concerned about their children's education and need assistance to keep their children in school (clothes and books). This may mean women and men having to take over the tasks within and outside the home which would often have been carried out by the displaced children, e.g. queuing for long hours to obtain assistance, food or water. Such factors must be recognized in programmes which should be adapted to ensure that children are not prevented from attending school because they have to carry out household tasks.

Women display tremendous strength and resourcefulness in the coping mechanisms they adopt when trying to ensure their own survival and that of their family, and they should be supported in this. Women in camps for internally displaced persons and refugees are frequently vulnerable, especially when they are heads of households, widows, elderly, mothers with small children, or unaccompanied girls. They have to shoulder all

the daily responsibility for survival which consumes enormous amounts of time and energy, and they may be targeted for exploitation or abuse within and outside the camp. Furthermore, they are likely to be overlooked by camp authorities and organizations providing assistance. This can be because in many cultures women are not accustomed to playing a public role and do not have their own identity documents, and because the special needs of women have not been taken into account by the programme planners. For example, pregnant women need more access to health services and larger food rations. Women should be included in the planning, implementation and evaluation of programmes to ensure that they are assisted appropriately and not ignored or exploited.

b) REVIEW OF INTERNATIONAL LAW

Three sets of rules are relevant to the issue of displacement. The first is the rules that *prohibit* the displacement of the civilian population in the first place. The second is the rules that apply and the rights to which the civilian population are entitled once displacement has occurred, and the third is the set of rules relating to return.

1) Prohibition of arbitrary displacement

i) *International humanitarian law*

International humanitarian law contains a number of provisions which expressly address the issue of displacement of the civilian population.

International armed conflicts

In general terms, the starting point of international humanitarian law is that parties to a conflict are prohibited from forcibly moving civilian populations during conflicts. This is a manifestation of the principle that the civilian population must be spared as much as possible from the effect of hostilities. Thus, for example, in the context of occupied territories, the Fourth Geneva Convention contains a wide prohibition of individual or mass forcible transfers, both within the occupied territory and beyond its borders, either into the territory of the occupying State or, as is more often the case in practice, into third States.^[215] There is a limited exception to this rule which permits an Occupying Power to “evacuate” the inhabitants of a particular area if this is necessary either for the security of the civilian population or for imperative military reasons. Displacements in such circumstances would not be considered arbitrary. Even then, however, the evacuation should not involve the displacement of protected persons outside the occupied territory unless this is impossible for material reasons. Displaced persons must be transferred back to their homes as soon as the hostilities in the area in question have ceased.^[216]

Reference should also be made to the fundamental rule that no-one should be transferred to a country where he or she may have reason to fear persecution: the principle

of *non-refoulement*. This principle, which is the cornerstone of refugee law, is also applicable in situations of armed conflict and is expressly laid down in Article 45 of the Fourth Geneva Convention.

Thus far, the focus has been on the right of the population of the occupied territory not to be arbitrarily moved. Also of relevance is the rule in the Fourth Convention which prohibits an Occupying Power from transferring parts of its own civilian population into the territory it occupies.^[217]

A number of other provisions of the Fourth Convention and Additional Protocol I, which do not deal specifically with displacement, nevertheless reflect the concern of international humanitarian law to prevent the displacement of civilians.^[218]

Non-international armed conflicts

The basic prohibition on displacing the civilian population is reiterated in Additional Protocol II, which prohibits forced movements of civilians both within a country and across a border.^[219]

Individual criminal responsibility

Unlawful transfers or deportations of protected persons are grave breaches of the Fourth Geneva Convention and Additional Protocol I, and constitute a war crime under the Statute of the International Criminal Court, whether committed in international or non-international conflicts.^[220] Similarly, the transfer by the Occupying Power of parts of its civilian population into the territory it occupies is a grave breach of Additional Protocol I and a war crime under the Statute of the International Criminal Court when committed in international armed conflicts.^[221]

ii) *Other bodies of law*

While international humanitarian law expressly prohibits arbitrary displacement, in **human rights law** this prohibition is not expressly laid down but can be inferred from the right to freedom of movement and choice of residence. Freedom of movement is discussed in detail below (see section on *Freedom of movement*), so at this juncture it is sufficient to indicate that this right is recognized in the International Covenant on Civil and Political Rights and in regional instruments.^[222] It should be noted, however, that these rights are subject to a number of exceptions, including measures necessary for the protection of national security and public order and can be derogated from in times of national emergency. Such derogations, however, must be strictly required by the situation and may not involve discrimination. This means that even in situations of emergencies when derogations are permitted, such derogations, including the displacement of persons, may not target only specific sections of the civilian population for discriminatory reasons. Forced displacement of certain ethnic groups would therefore be unlawful.

While **refugee law** does not actually prohibit displacement as such, the principle of *non-refoulement* puts an important limitation on States' power to order the movement

of persons. As it has evolved, the principle prohibits the transfer of persons either to another State or to a different area within a State if there are grounds for believing that such a transfer will expose the person to the risk of persecution. *Non-refoulement* was declared to be a principle of *jus cogens* in the 1984 Cartagena Declaration on Refugees.^[223]

Other – In 1998 the Representative of the Secretary-General on Internal Displacement finalized the *Guiding Principles on Internal Displacement*.^[224] This non-binding document brings together the various forms of protection afforded to internally displaced persons by existing rules of international humanitarian law, human rights law and refugee law. It deals with the prevention and prohibition of displacement, fundamental safeguards and rights during displacement, and the right to return. Principle 6 deals with the prohibition on displacement. It provides: “1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. 2. The prohibition of arbitrary displacement includes displacement: (a) When it is based on policies of apartheid, ‘ethnic cleansing’ or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population; (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand; (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests; (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and (e) When it is used as a collective punishment”.^[225]

2) Safeguards once displacement has occurred

Once displaced or evacuated, persons are entitled to various basic protections and rights. Apart from the special provisions relating specifically to displaced persons, such persons are part of the civilian population and therefore entitled, while displaced, to the whole range of protection and rights appertaining to the civilian population discussed in other sections of this study.

i) *International humanitarian law*

The Fourth Geneva Convention lays down basic conditions for evacuations. The safeguards relate principally to the conditions in which the displacement has to be carried out, and to the requirement that, during displacement, persons be provided with appropriate accommodation and that families should not be separated.^[226] Additional Protocol II lays down similar basic conditions for evacuations in non-international armed conflicts.^[227] Although both provisions relate to “lawful” displacements for reasons of security or imperative military necessity, these conditions are applicable *a fortiori* in situations of “unlawful” displacement. A final remark should be made concerning the scope of application of these rules. As international humanitarian law is applicable only in situations of armed conflict, displaced persons will be entitled to such protection if they are displaced within a State that is experiencing an armed conflict – whether international or non-international – or if they are displaced across a border into a State that is also experiencing an armed conflict – again, international or

non-international. The protection afforded by international humanitarian law will not, however, be available if the State to which they are transferred is not experiencing an armed conflict. In such cases the displaced persons will have to rely on human rights law or refugee law.

ii) Other bodies of law

Human rights law does not contain any provisions which deal specifically with displaced persons. However, all provisions of a human rights treaty are available, without discrimination, to all persons within the control of a State party to a particular human rights instrument. This means that the full range of rights must be guaranteed to displaced persons – be they internally displaced and thus nationals of the State in which they find themselves, or refugees – without any adverse distinction based on their displacement. The rights in question are discussed in other sections of this study and include safety of the person, access to the courts and judicial guarantees, the right to be a person before the law, and rights to housing, food and education.

In addition, the majority of internally displaced persons are nationals of the State in which they find themselves. While refugees are entitled to certain rights on a “most favoured foreigner” basis (for example, they are not granted certain political rights and may have a more limited entitlement to certain economic and social rights), internally displaced persons are entitled to the full range of rights, be they under human rights treaties or under national law, on the same basis as their co-nationals who have not been displaced.

Refugee law only protects displaced persons who have crossed an international border. The 1951 Refugee Convention lays down a number of rights that must be granted to persons falling within the definition of refugee. In addition to the fundamental right of *non-refoulement*, these include: the right to respect for their juridical status; access to the courts; the right to acquire property; access to employment and to protection of labour legislation and social security; and the right to housing and public education.^[228]

In addition to sharing the problems experienced by all refugees, women also have special protection needs that reflect their sex and gender. In 1991 UNHCR prepared *Guidelines on the Protection of Refugee Women* aimed at incorporating the resources and needs of refugee women into all aspects of programming to ensure equitable protection and assistance activities.^[229]

3) Right to return

i) International humanitarian law

A related issue is the question of return. The Fourth Geneva Convention provides that evacuated persons must be transferred back to their homes as soon as hostilities in the area have ceased.^[230] This rule relates to “lawful displacements”, i.e. evacuations for reasons of security or imperative military necessity which, according to the same provision, should be carried out within the borders of the occupied territory. However as the rule does envisage the possibility of evacuations into third States in exceptional

situations, this right of return is also applicable to persons who have been displaced across a border. As the provision in question relates to “lawful displacements”, a right to return would be applicable *a fortiori* following unlawful displacements.^[231]

ii) Other bodies of law

Human rights instruments expressly lay down the right to return to one’s State of nationality.^[232] They thus address the position of persons who have been displaced across a border. They do not, however, contain an express right for internally displaced persons to return to their original places of residence or to move to another safe place of their choice within their own country. Arguably, such a right can be inferred from the provisions discussed above, granting the right to free movement and the freedom to choose one’s residence.^[233]

Refugee law deals with another aspect of the right to return. While recognizing the right of refugees to return to their State of nationality, refugee law emphasizes the voluntary nature of such repatriation – refugees should not be returned to their State of nationality against their will. Thus Chapter I.1 of the 1950 Statute of the Office of the United Nations High Commissioner for Refugees entrusts the High Commissioner with *inter alia* [facilitating] “the voluntary repatriation of (...) refugees”.^[234] The voluntary nature of repatriation has been reasserted and developed in a number of resolutions of the Executive Committee of the UNHCR High Commissioner’s Programme (EXCOM), and at regional level is expressly laid down in the Organization for African Unity (OAU) Refugee Convention.^[235]

Principle 15 of the *Guiding Principles on Internal Displacement* states that internally displaced persons have the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty or health would be at risk. Section V of the Principles lays down the rules relating to return, resettlement and reintegration. Principle 28 requires competent authorities to establish conditions and to provide the means to allow internally displaced persons to return voluntarily, in safety and in dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. This provision goes further than the international humanitarian law and human rights norms on which it is based, by expressly recognizing the right to return in situations of internal displacement.

c) THE ICRC’S OPERATIONAL RESPONSE

The ICRC assisted almost five million persons internally displaced by armed conflict in 1999. In the year 2000, it worked to protect and assist internally displaced persons in 31 countries throughout the world.^[236] In some of these countries, women have been specifically consulted by the ICRC as to what assistance should be distributed to whom, for example, to find out what would best meet the needs of households headed by women.

In situations of international and non-international armed conflict, the ICRC considers “an internally displaced person to be first and foremost a civilian, who as such is protected by international humanitarian law”.^[237] The ICRC seeks protection and provides assistance for victims of armed conflict, internal disturbances and their direct results anywhere in the territory of a State affected by such events, and acts as lead agency for international relief operations conducted by the International Red Cross and Red Crescent Movement.^[238] The International Federation of the Red Cross and Red Crescent Societies acts as lead agency in operations in aid of refugees who have fled a country at war to a country which is neither party to a conflict nor affected by internal strife.^[239]

In the case of refugees who have sought refuge in a State that is experiencing an armed conflict – be it international or non-international – and are thus covered by international humanitarian law, the ICRC encourages the application of the relevant provisions of international humanitarian law and seeks access to the refugees. With respect to refugees who are not protected by international humanitarian law (i.e. who have fled the conflict and are in a host State *not* involved in a conflict), the ICRC will only act in a subsidiary capacity if it is the sole organization in the area concerned. However, in emergency situations, the ICRC will provide any assistance required if it is in a position to provide it immediately, and will hand over programmes to UNHCR and other organizations as soon as possible. That being said, there may be situations in which the ICRC feels concern about major security problems which refugees face in host countries, usually when violence or military activities are directed against refugees in camps near the borders or when military troops or elements are mixed with refugees in camps. In these cases the ICRC calls upon the parties to the conflict to meet their obligations under international humanitarian law. In all cases, the ICRC may offer the services of its Central Tracing Agency and its family reunification and war surgery programmes.

In situations of internal displacement in armed conflict, IDPs are entitled to general protection and assistance as members of the civilian population. The ICRC carries out various activities: striving to ensure the protection of the civilian population and respect for international humanitarian law and humanitarian principles; visits to persons deprived of their freedom; emergency assistance activities (hygiene, health, food and other aid) for IDPs and sometimes for their host families; and activities to restore family contact.^[240] The ICRC’s work may be carried out in close coordination with the National Red Cross and Red Crescent Societies and their International Federation.

The ICRC stresses the paramount importance of a safe return or repatriation process and launches activities to support such processes on a case-by-case basis. The services it may provide are diverse; re-establishment of family links, family reunifications, health posts along the road, distribution of food, support to agricultural programmes upon return, to name but a few examples.

d) **KEY POINTS**

1. Women need to be protected from arbitrary or forced displacement, so that they can remain within their communities and with their families. However, if for security or other reasons they decide that they have to leave their homes, they should be able to do so and not be prevented by a party to the conflict. Women should be fully respected and protected while displaced.
2. Women need to be included in the planning, implementation and evaluation of programmes to ensure that those programmes meet their actual needs and support their existing coping mechanisms.
3. Displaced women need privacy in order to maintain their security, dignity and personal health and hygiene. Their particular needs must be taken fully into consideration in the design and implementation of programmes in camps.
4. Displaced women should have the possibility of sending their children to school as soon as the prevailing situation permits, so that their children can receive an appropriate education.
5. If women are displaced, they risk being separated from their family members and need help in restoring contact and being reunited.

4. **Freedom of movement**

The civilian population must be able to move freely, without fear of harassment, attack or injury, in its home areas in order to maintain access to means of subsistence and health requirements (water, food, firewood, medicine) and to conduct day-to-day activities (trade, farming, work, school, practising religion). Furthermore, mobility is necessary for visiting and caring for family members (including those in detention), and for access to public services and international and non-governmental organizations.

a) **OVERVIEW OF PROBLEM**

In many countries, women move around their communities and often travel long distances to search for food, water, traditional herbs, medicines and medical care for their families and themselves. They need to be able to do so free from harassment, attack and injury. This protection is especially important in the absence or breakdown of traditional family and community support networks resulting from the outbreak of armed conflict.

In situations of armed conflict, women and girls may also take on tasks previously carried out by their male relatives which take them outside or further away from their traditional environment, for example, farming, trading or grazing animals. Women may be perceived as less threatening and thus may have more mobility to carry out economic activities which men are no longer able to do. Mobility may be severely restricted because of the introduction of checkpoints and the presence of soldiers, restrictions on movement for security reasons (danger of snipers, anti-personnel mines and unexploded ordnance), and/or the breakdown in structures and systems. Women need to have personal documentation in order to be able to move about freely and to pass checkpoints and security checks (often they do not have their own documentation). This can cause security problems and reduce their mobility, and can arouse the suspicion of the military and security forces. Women may also need documentation to flee their homes and become displaced in safety, especially if they have to cross an international border. If they choose to do so, they should be able to leave an area because of the prevailing security or political situation. Women's movements may also be hampered by cultural restrictions: for example, a woman may not be allowed to travel without her husband or a male family member without losing her respectability in the eyes of society. Therefore, women have to be able to maintain family and community ties in order to preserve their mobility.

When moving, civilians may be harassed at checkpoints, and sometimes injured or killed. Body searches for money and valuables may take place. In some cases, these are carried out in very humiliating ways.

b) REVIEW OF INTERNATIONAL LAW

An issue related to the question of displacement is that of civilians' freedom of movement. This too can be seen from a number of different angles: the right to leave one's own State of residence or nationality and the right to move within it. Furthermore, related to the issue of freedom of movement are all the provisions of international humanitarian law and human rights laws concerning detention and internment (see chapter on *Detention*), as well as personal documentation (see section on *Personal documentation*), discussed below.

1) International humanitarian law

In addition to the provisions discussed in earlier sections, international humanitarian law expressly touches on the question of the civilian population's freedom of movement only in very specific situations. The Fourth Geneva Convention lays down the right of aliens to leave the territory of a party to a conflict or occupied territory, and to move away from an area particularly exposed to the dangers of war.^[241] Neither common Article 3 nor Additional Protocol II deals with freedom of movement. However, the right to move in order to secure the right to personal safety or means of

subsistence or to enjoy the other safeguards granted to civilians under international humanitarian law is implicit in these other rights. This means that, although limitations can be placed on civilians' right of movement, this cannot be done in such a manner as to deprive them of their other rights.

2) Human rights law

Human rights law expressly recognizes the right to freedom of movement. It identifies two principal rights. The first is the right to leave any country, including one's State of nationality^[242], and the second is the right of anyone who is lawfully within a State to move freely within that State and freely choose a residence therein.^[243] These rights are not absolute, and can be subject to restrictions necessary for protecting national security, public order, public health and public morals. Such restrictions cannot, however, be imposed so as to deprive persons of the other rights granted by the human rights instruments in practice.

3) Refugee law

The principle of freedom of movement is also taken up with regard to refugees in the 1951 Refugee Convention. This requires States to grant refugees who are lawfully in their territory the right to choose their place of residence and to move freely within their territory, subject to the same restrictions applicable to aliens in the same circumstances.^[244]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC may make representations to the parties to the armed conflict to respect and protect the civilian population so as to ensure its freedom of movement. The ICRC may also help organize transportation of persons from areas of immediate danger or directly organize it. In line with its mandate, the ICRC may remind the parties of their obligations under international humanitarian law, and make representations to arms bearers responsible for violations. It may also endeavour to act as a neutral intermediary between the parties to the conflict, or between the victims and the authorities, to facilitate the conclusion of agreements aimed at resolving humanitarian problems, like safe access to resources, safe passage or the evacuation of persons at risk. Wherever return is feasible, the ICRC also encourages authorities to take the necessary measures for ensuring that return can take place in safety and dignity, and that the necessary material conditions are in place.

Freedom of movement can also be restricted by a lack of financial means for travel expenses. In some countries, the ICRC pays the travel costs for family members to visit relatives detained in connection with a conflict (for details see chapter on *Detention*).

In some contexts the ICRC is involved in the repatriation of released prisoners, organizing their transport from the place of release to their home country or place of residence in order to ensure their safe return home.

The ICRC organizes the transfer for family reunification purposes of family members who have been separated by conflict. These family reunifications often take place across borders and involve negotiations with all parties involved in the conflict. If the persons to be transferred do not have identity papers, the ICRC may issue travel documents. Travel documents are given out to displaced or stateless persons and to refugees who do not have proper identity papers and therefore have no possibility of returning to their country of origin or reaching a third country.^[245] Since 1945, more than 500,000 displaced persons, stateless persons and refugees have travelled with the help of ICRC travel documents.

d) KEY POINTS

1. Women need to be able to move around freely and safely in order to have access to means of subsistence and health care and to conduct day-to-day activities.
2. Women should have legally recognized identity documents issued in their own names to ensure their freedom of mobility and security.
3. Any repatriation or return of refugees or internally displaced persons should be into a secure environment, and basic material requirements should be assured.

C. Food and water

1. **Food**

The civilian population needs safe and regular access to food which is both nutritionally balanced and sufficient for healthy survival.^[246] The type and quantity of food necessary for each person depends on many factors, such as whether the recipient is male or female, sick, old, young, pregnant, or a lactating mother, as well as on living, working and climatic conditions. Food is obtained by a number of means, including self-production, paid labour or sale of assets, from local authorities or humanitarian organizations and by trading other essential goods and services for food. In both rural and urban areas, families are increasingly dependent on the market and trade to obtain food and other goods.

a) OVERVIEW OF PROBLEM

In situations of armed conflict, civilians will often find it difficult to ensure their food security, and may sell their non-productive and productive assets to support themselves. This is because of factors directly related to the armed conflict, such as displacement, lack of opportunities, limited mobility and the need to give priority to physical safety above all else.

Women need an adequate and well-balanced diet in order to maintain health and well-being. “In general, women as a group are structurally more vulnerable to crisis because they usually have less access to resources and also have the burden of reproduction.”^[247] The reproductive role of women and girls increases their vulnerability to food shortages or inadequacies. Women of childbearing age may need more vitamins and minerals, e.g. iron, proteins and iodine. Similarly, pregnant and lactating mothers have specific nutritional requirements in order to bear and raise healthy children while maintaining their own health. Poor nutrition in pregnant mothers can result in underweight babies and/or babies being born with illnesses or susceptibility to disease. If girls do not receive adequate food, this can lead to stunted growth and a limited capacity to bear children. “Iron-deficiency anaemia, protein-energy malnutrition and iodine deficiency all affect women more than men and vitamin-A deficiency is twice as common in girls as boys. These deficiencies all increase the risks of maternal and infant mortality.”^[248]

Nursing mothers who for medical reasons are not able to breastfeed their babies should be helped by another mother (who must be free from HIV/AIDS infection) or have access to a substitute (e.g. milk powder, cow’s milk), clean water, a safe means of preparing and storing this substitute and water, and sterilization equipment. Furthermore, they should be given appropriate instruction on how to prepare the milk substitute.^[249]

Women must also have access to food without culturally imposed limitations or restrictions. Traditional practices of gender-preferencing (giving food to men and boys as a priority while limiting women’s and girls’ food intake), which exist in some countries, can seriously affect the health and development of women and girls and their capacity to bear healthy children.

Moreover, as armed conflict frequently results in the absence of menfolk and/or their restricted mobility, tasks traditionally undertaken by them, such as farming, fishing and paid labour, will be seriously affected. This in turn will affect access to the amount of food available to the household, which may already be close to the minimum required to feed the family. In the Sudanese conflict, for instance, recurring displacements and drought have changed the quantity, quality and availability of food, but the community still expects women to see to the nutritional needs of the family.^[250] It must be noted also that the pattern of food collection and provision amongst family members will change during and after conflict. For example in Tbilisi, Republic of Georgia, many women have taken up petty trading, a low-income activity which men traditionally shun.

In many countries, women are almost exclusively responsible for the provision and nutritional content of food in the household (stockpiling, preparation), although men are usually the providers of the household income. Women are often heavily dependent on “kinship” ties to support their families, sharing and borrowing food and other items during periods of scarcity. In times of armed conflict women frequently assume the role of head of household in the absence of their menfolk – a role for which they and their community are often unprepared. “Particularly vulnerable are the growing number of women without husbands – either widows or women whose husbands are fighting, in exile, or who have abandoned them. (...) Women without men are constrained by their lack of access to the main source of wealth in agro-pastoralists southern Sudanese society – cattle. Moreover, women do not hunt and in some areas, some forms of fishing (e.g. from deep-water canoes) are done by men only. Women may travel some distance to trade goods, but not as far as men.”^[251]

Women must have secure access to markets, an important source of food in all societies, in order to be able to trade and purchase food and other essential commodities. In armed conflicts, formal trading systems and markets are often severely disrupted, and the transport infrastructure minimal if not non-existent. This severely hampers access to food and materials for food preparation. Furthermore, the dangers inherent in armed conflict severely limit the possibility of collecting wild foodstuffs, a task normally carried out by women in many communities, and an important supplement to the household’s food resources.

Moreover, soldiers may be billeted in barracks or accommodated in individual households and be dependent on resources from the civilian population, thus reducing the quantity of food available. Women should be able to live free from the presence of parties to an armed conflict within their households, and without food being taken from them.

Women need to have safe access to food, and the imposition of restrictions on access to food should not be used as a means of warfare. Some of the reasons for lack of access to food may be the result of deliberate starvation of the population as part of the conflict and/or because of a restricted capacity to produce food or receive assistance. Armed conflict also heightens the vulnerability of civilian populations to natural disasters because it exacerbates problems of food scarcity and hampers assistance operations.

In the area of humanitarian assistance, men – and not women – have traditionally been the major actors in the planning and delivery of goods and services, and receive the aid on behalf of their families.^[252] Accurate data is not systematically collected on the demographic (sex and age) composition of groups to be assisted, whether for civilian populations *in situ*, or for IDPs and refugees in camps. Households headed by women may be omitted from the collection of statistics because they are absorbed into the family of their absent husbands or because they have been overlooked. These factors make it difficult for women and girls to receive sufficient and appropriate humanitarian assistance. Furthermore, inappropriate planning, implementation and monitoring

of programmes have often led to instances of women and girls being exploited and sexually and physically abused (as well as having their workload increased through poorly planned programmes).^[253]

According to the United Nations Charter, economic sanctions can be used “to maintain or restore international peace and security.”^[254] Since the end of World War II, the United Nations has increasingly resorted to the imposition of economic sanctions, e.g. in South Africa, the former Yugoslavia, Haiti, Iraq, Rwanda and Sudan.

Women, and particularly children, who are more vulnerable, may suffer disproportionately under economic sanctions. For example, women cannot have safe pregnancies and deliveries because of the lack of material and personnel in hospitals, and children are affected by malnutrition and a lack of medication for preventing and treating childhood illnesses.

b) REVIEW OF INTERNATIONAL LAW

The question of the right to food is addressed by international humanitarian law in the provisions prohibiting the use of starvation of the civilian population as a means of warfare and those relating to access to humanitarian assistance; it is also addressed by human rights instruments, both indirectly in terms of the right to life, and also as a right in itself.^[255] The final part of this section will focus on a problem that has also become increasingly acute: the question of the compatibility of economic sanctions with the right to food.

Although this section will focus principally on the rules dealing specifically with the right to food, reference should also be made to the rules discussed in preceding sections relating to the right to life and personal safety and those prohibiting arbitrary displacement, as the displacement of the civilian population is one of the major factors contributing to hunger and starvation in times of armed conflict.

1) International humanitarian law

While international humanitarian law does not contain an express reference to the right to food as such, many of its provisions are aimed at ensuring that persons not or no longer taking part in hostilities are not denied food or access to it. The relevant rules of international humanitarian law fall into two categories: preventive rules imposing limits on permissible means and methods of warfare; and rules concerning humanitarian assistance. Within this second category there are a number of provisions that lay down special measures to be taken in aid of women and children.

i) *Limitations on means and methods of warfare*

International humanitarian law prescribes certain conduct and prohibits certain behaviour with the aim of preventing severe food shortages or denial of access to food in situations of armed conflict. The first relevant rule is the principle of distinction requiring

parties to a conflict to distinguish at all times between the civilian population and combatants, and between civilian objects and military objectives. The application of this principle with regard to the civilian population has been discussed in the introduction. Its application with regard to objects is of particular relevance to the question of the right to food. Attacks can be directed only against military objectives.^[256] This means that attacks against objects utilized exclusively by the civilian population, such as supplies of food, are prohibited.

A number of other rules limiting means and methods of warfare, although not expressly referring to starvation or to food, are also relevant. Given the importance of the natural environment to the survival of humans, including their ability to produce and consume food, international humanitarian law requires that care be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This duty of care includes a prohibition on the use of means and methods of warfare intended or expected to cause such damage to the natural environment and thereby prejudice the health or survival of the population.^[257] In addition to this general prohibition, a number of instruments prohibit the use of specific weapons, such as chemical weapons, which may cause long-term damage to the environment.^[258]

International armed conflicts

This general rule is developed in Additional Protocol I, which prohibits the starvation of civilians as a method of warfare.^[259] As a corollary to this rule, the Protocol states that it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population.^[260] These objects include foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.^[261] Moreover, objects indispensable to the survival of the civilian population cannot be the object of reprisals.^[262]

Non-international armed conflicts

In non-international armed conflicts, the principle of distinction is also applicable and Additional Protocol II reiterates the prohibition on starvation of the civilian population as a method of warfare and the related prohibition on attacking and destroying objects indispensable to its survival.^[263]

Individual criminal responsibility

Under the Statute of the International Criminal Court “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for in the Geneva Convention” is a war crime when committed in international conflicts.^[264]

ii) Rules on humanitarian assistance for the civilian population

If the principles and rules outlined above are not properly applied or not applied at all, or if malnutrition and hunger are otherwise caused by an armed conflict, action to

bring relief to the civilian population – or other persons not participating in the hostilities, such as the wounded and sick – becomes necessary. International humanitarian law contains important provisions aimed at ensuring that persons in need receive humanitarian assistance.

International armed conflicts

The Fourth Geneva Convention requires States Parties to allow the free passage of certain types of goods intended for specific categories of the civilian population belonging to another State Party, even if the latter is its adversary in the conflict.^[265] The limited scope of this provision has been remedied to a large extent by Additional Protocol I. Although primary responsibility remains with the State controlling a territory, the Protocol provides that relief actions for the entire civilian population of any territory under the control of a party to an international conflict shall be undertaken if the population is not adequately provided with supplies – which of course include food.^[266] Such relief actions must be humanitarian and impartial in character and be conducted without any adverse distinction. The Protocol states that relief actions are subject to the “agreement” of the parties concerned. This raises the issue of whether a State is obliged to accept humanitarian aid for the benefit of its own population. It is generally accepted that a State must accept relief actions when the above-mentioned conditions are met: i.e. when the civilian population is not adequately supplied and when relief, humanitarian and impartial in nature, is available. Refusing a relief action or relief consignment is thus not a matter of discretion, and agreement can be withheld only for exceptional reasons and not for arbitrary or capricious ones.^[267] These rules must be read in conjunction with those mentioned above prohibiting the starvation of civilians as a method of warfare.

The Fourth Geneva Convention and Additional Protocol I also lay down a series of provisions dealing with collective and individual relief supplies for civilians in occupied territories. The basic rule, laid down in the Fourth Geneva Convention, is that the Occupying Power has the duty to provide food and medical supplies for the population and that it should bring the necessary foodstuffs, medical stores and other articles into the occupied territory if the resources of that territory are inadequate.^[268] While the Occupying Power retains primary responsibility for meeting the needs of the population of the occupied territory, if the whole or a part of the population is inadequately supplied it must agree to relief schemes and must facilitate them by all means at its disposal.^[269]

Also of fundamental importance to the delivery of humanitarian assistance are the rules protecting humanitarian personnel. Persons participating in relief actions are entitled to protection as civilians, and Additional Protocol I specifically focuses on such persons, providing that they must be respected and protected.^[270]

Non-international armed conflicts

Under Article 3 common to the Geneva Conventions, “an impartial body, such as the International Committee of the Red Cross, may offer its services to the Parties to the

conflict". Although the express terms of the provision are limited, its relevance with regard to relief actions, including those aimed at providing food aid, must be interpreted with the following considerations in mind: firstly, denial of food or of access to food to persons *hors de combat* is a violation of the principle of humane treatment laid down in common Article 3. Secondly, common Article 3 entitles impartial humanitarian organizations to offer their services to the parties to the conflict, an offer which cannot be arbitrarily declined. Such offers of services obviously include relief actions, including those aimed at providing food aid.

Furthermore, Additional Protocol II provides that relief societies, such as Red Cross and Red Crescent organizations located in the territory of a State party to the Protocol, "may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict".^[271] Such an offer of services can of course include the provision of food aid or the taking of other measures to ensure that persons affected by a conflict do not suffer hunger and malnutrition. The Protocol also adds that "if the civilian population is suffering undue hardship owing to a lack of supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned".^[272]

In non-international conflicts too, the fact that the consent of the State in question is required for the relief activities to be carried out does not mean that the decision whether to grant permission is left to the discretion of the State, and the rule should be seen as equivalent to that which is applicable in international armed conflicts.^[273]

Individual criminal responsibility

Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance mission is a war crime under the Statute of the International Criminal Court when committed in international or non-international armed conflicts,^[274] as is impeding relief supplies in international armed conflicts.^[275]

iii) Special measures for the benefit of women and children

Finally, reference should also be made to the numerous rules of international humanitarian law providing that women and children must be adequately supplied with food and have the right to individual and collective relief. Most of the provisions are aimed at ensuring that specific categories of women – principally pregnant or breast-feeding women – as well as children, are provided with sufficient nourishment. Thus the Fourth Geneva Convention requires High Contracting Parties to permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under the age of fifteen, expectant mothers and maternity cases.^[276] Additional Protocol I provides that, in the distribution of relief consignments, priority must be given to children, expectant mothers, maternity cases and nursing mothers.^[277]

In the context of occupation, the Fourth Geneva Convention prohibits the Occupying Power from hindering the application of any preferential measures in regard *inter alia* to food which may have been adopted prior to the occupation in favour of children under the age of fifteen, expectant mothers and mothers of children under the age of seven;^[278] while, with regard to persons interned in situations of occupation, it stipulates that expectant and nursing mothers and children under the age of fifteen must be given additional food in proportion to their physiological needs.^[279]

While the aforementioned provisions relate to international conflicts, and Article 3 common to the Geneva Conventions and Additional Protocol II do not address the issue of “preferential access” to food for particular categories of persons, the same underlying considerations are also applicable in non-international conflicts.

2) Human rights law

A number of human rights instruments recognize the right to an adequate standard of living, expressly including the right to food, and require States to progressively fulfil these rights. They include the International Covenant on Economic, Social and Cultural Rights and, with regard to children, the 1989 Convention on the Rights of the Child.^[280] At regional level, the right to adequate nutrition is included in the 1988 San Salvador Protocol additional to the American Convention on Human Rights.^[281]

In its General Comment on the Right to Food, the Committee on Economic, Social and Cultural Rights stated that any discrimination in access to food, as well as to means and other entitlements for its procurement, on the grounds *inter alia* of sex, with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant.^[282]

The right to adequate food is also implicit in other rights recognized by human rights instruments, most notably the right to life. According to the Human Rights Committee, this right has often been interpreted too narrowly, and the expression “inherent right to life” in Article 6 of the International Covenant on Civil and Political Rights cannot properly be understood in a restrictive manner, and the protection of this right requires States to adopt positive measures.^[283] A broad interpretation of the rights to life and to food would impose an obligation on States to supply essential foodstuffs to those in need. Even if this approach were not to be accepted, the existence of these rights means, at least, that States are prohibited from acting in a manner which actively deprives persons of food and causes hunger and starvation.

3) Other bodies of law

Refugee law requires States to give refugees the same treatment as nationals of the host State with regard to public relief and assistance and to any rationing system.^[284]

It should be recalled that the deliberate starvation of a national, ethnic, racial or religious group, if committed with the intent to destroy the group in whole or in part, could amount to genocide under the 1948 Genocide Convention.^[285]

Finally, mention must be made of the Declaration on the Protection of Women and Children in Emergency and Armed Conflict adopted by the UN General Assembly in 1974, which expressly provides that women and children belonging to the civilian population who find themselves in circumstances of emergency and armed conflict or who live in occupied territories must not be deprived of food.^[286]

4) Economic sanctions and the right to food

A final issue that must be addressed is the impact of economic sanctions on the right to food.^[287] Under the UN Charter, the Security Council has the power to impose binding sanctions on a State once it has determined that a threat or breach of the peace or an act of aggression exists.^[288] The purpose of such sanctions is to make the State concerned comply with its obligations under international law. The scope of sanctions can vary; they can include embargoes on transfers of weapons, on financial transactions and on travel by government officials, and also comprehensive trade sanctions which effectively prohibit all trade with the targeted State. Sanctions can be imposed in situations of peace or of armed conflict.

Since the end of the Cold War, the Security Council's increasing recourse to sanctions has given rise to concerns among humanitarian organizations because comprehensive trade sanctions may adversely affect both the situation of the population of the target State and the delivery of humanitarian assistance.

It is generally accepted that the Security Council is bound to observe principles of human rights and international humanitarian law when imposing, monitoring and reviewing sanctions regimes.^[289] While international humanitarian law does not address the issue of sanctions, the prohibition on starvation of the civilian population and the rules concerning the provision of foodstuffs and medical supplies discussed above should be taken into account by the UN Security Council when deciding on the nature of the sanctions to be imposed.

Similarly, when sanctions are imposed in peacetime, the right to life, health and adequate supplies of food should also be taken into account and a sanctions system which would deprive persons of these rights should not be established. The UN Committee on Economic, Social and Cultural Rights has addressed the impact of sanctions on two occasions. In General Comment No. 8 it highlighted the fact that States and organizations imposing economic sanctions must always take into account the provisions of the Covenant on Economic, Social and Cultural Rights and consider the impact of sanctions on vulnerable groups, and that human rights protection has to be incorporated into the design and monitoring of sanctions.^[290] In General Comment No. 12, the Committee stated that "States (...) should refrain at all times from [imposing] food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political or economic pressure",^[291]

It has generally become accepted that in situations where an envisaged sanctions regime is liable to affect the civilian population, it should contain "humanitarian

exceptions” permitting the provision of essential foodstuffs and medical supplies necessary for the survival of the civilian population.^[292] Security Council practice in recent years has tended towards the inclusion of such provisions. In the case of Iraq, for example, Security Council resolution 661 (1990) excludes from the sanctions regime “supplies intended strictly for medical purposes and, in humanitarian circumstances, foodstuffs”.^[293] Similarly, the comprehensive economic sanctions imposed on the Federal Republic of Yugoslavia in 1992 did not include “supplies intended strictly for medical purposes and foodstuffs”.^[294]

c) THE ICRC’S OPERATIONAL RESPONSE

ICRC assistance operations in times of armed conflict aim to protect the victims’ lives and health, to ease their plight and to ensure that the consequences of conflict – disease, injury, hunger – do not jeopardize their future,^[295] by bringing them goods essential to their survival when they are no longer able to obtain them by their own means and when the authorities fail or are unable to provide such goods and services.

In such circumstances, the ICRC makes representations to the parties to the armed conflict and gives direct assistance to the victims if they do not have the means, or have insufficient means, to meet their essential household needs. The ICRC negotiates with the parties on matters relating to the supply of food for the civilian population: safe access to fields and crops, safe passage of food convoys, security of food assistance operations. ICRC assistance seeks to preserve or restore living conditions with a view to reducing dependence on outside aid and enabling victims to maintain an adequate standard of living. Assistance activities also aim to reduce morbidity and mortality among victims as rapidly and effectively as possible.^[296] The ICRC assesses the ways in which households manage their assets, e.g. the sale of household and/or farming goods to purchase food, etc., and strives to protect the economic security of households and communities through direct assistance. It is concerned with both the means of production required to cover all the basic economic needs of a household as defined by its physical and cultural environment, and the provision of the necessary resources to meet such needs.^[297]

Situations of armed conflict create many operational challenges for the provision of humanitarian assistance. Access to victims, success in delivering assistance, giving the right assistance and the establishment of logistic pipelines are dependent on the prevailing security situation, the agreement of the parties to the conflict, the capacity of the relief agency concerned, the support of local communities and climatic conditions, to name but a few.

The ICRC distributes food and other supplies to the civilian population directly affected by the fighting and those who have fled and become displaced because of violence or armed conflict. Thus IDPs, victims of violence, particular target groups (widows, female heads of households) and institutions providing assistance to vulnerable members of the community (hospitals, maternity hospitals, psychiatric institutions, orphanages, etc.) receive aid.

In general, the ICRC believes that the provision of food alone, even if brought in amounts consistent with requirements, cannot be sufficient to cover all needs because the more destitute people are, the more likely they will be forced to exchange some of it for other essential goods and services. Thus any humanitarian food aid programme which ignores the multidimensional aspect of food within and between groups of people is likely to encounter serious problems. For example, in Ethiopia in 1985 and also in Rwanda in 1992-93, people were completely destitute, with high rates of malnutrition and mortality, yet they were selling some of the food they received. In its assistance programmes for people threatened by famine, therefore, the ICRC has adopted the principle of providing a package of essential services, not only food.

With regard to economic sanctions, the role of the ICRC is first to make sure that States are aware of their humanitarian obligations when imposing such measures. Secondly, the ICRC tries to supply humanitarian assistance to the most vulnerable among the civilian population affected by the sanctions with the consent of all parties involved.

The ICRC has called – publicly or in its bilateral or multilateral contacts – for adequate humanitarian exemptions to the sanctions regime. It may enter into discussion with bodies such as Sanctions Committees to ensure that the exceptions function satisfactorily.

In field delegations, the preparation of lists of beneficiaries for food and non-food distributions is often carried out according to vulnerability criteria defined in terms of the period of displacement, the level of looting and house destruction, the poorest families, single-parent households and the elderly. For example, in one country the village chiefs (all men) prepared the lists of beneficiaries; there was no mechanism in place to ensure that women in the community participated in the selection. During a second round of distributions, this time of seeds and tools in the same area, the ICRC asked village chiefs and heads of districts to set up a selection committee in the village, including women, to list beneficiaries.^[298]

Women receiving ICRC assistance as beneficiaries include the following: women whose breadwinners have disappeared in connection with the conflict; women members of the families of detainees; widows who have become the head of the household and destitute; women who are economically destitute and elderly, assisted by kitchen programmes; vulnerable families (single head of household, war widows, the elderly).

The ICRC, like many organizations, has adopted a clear policy on the distribution of milk powder to women who have problems breast-feeding babies. To maintain babies' health and development, the ICRC has had to provide milk powder. This has been done on an ad hoc basis and always under professional supervision to ensure that appropriate standards are met, e.g. in therapeutic feeding centres or places of detention.^[299] Such assistance requires careful explanation and monitoring.

To conclude, ICRC food distribution programmes for persons affected by armed conflict endeavour to adopt criteria for assistance based on vulnerability and not on specific categories, e.g. men or women, adults or children. This is the foundation of the

ICRC's "all victims approach" (an approach which allows the ICRC to respond to victims of armed conflict whoever they may be). To assist the most vulnerable, it is necessary to know who they are, why they are vulnerable and what they need. This is true whether they are men, women, girls, boys, internally displaced persons, detainees, war-wounded, etc. However, clearly women often feature amongst ICRC beneficiaries selected on the basis of need and particular vulnerability caused by armed conflict.

d) KEY POINTS

1. Women as members of the civilian population should never be deprived of food as a means of warfare.
2. If economic sanctions are imposed, they should comply with international humanitarian law and human rights. Humanitarian exceptions should be made and the situation should be monitored in order to avoid suffering among the civilian population.
3. In the targeting and delivery of food and non-food assistance to victims of an armed conflict, humanitarian organizations should take into account the implications of the changing role of women, who become heads of households in the absence of the menfolk.
4. Humanitarian organizations should be aware of the risk of women having to submit to abuse in order to be included as beneficiaries when receiving food and non-food assistance. This should be taken into consideration when mechanisms for planning, implementing and monitoring programmes are put in place. For example, women should be included in programmes so as to increase knowledge of their specific problems and needs, and to check whether exploitation or abuse is taking place, and to ensure that controls are carried out to prevent women from becoming victims of such abuse.
5. Data (by sex and age) on the demographics of the population to be assisted should be collected in order to determine who actually makes up that population and to ensure that appropriate assistance and services are provided. For example, the collection of such data may highlight the fact that men are missing from the target population; and this will have implications for the type of assistance needed by households headed by women. Such data should also indicate households which are comprised of unaccompanied women and women solely responsible for dependent children, elderly or disabled persons or unaccompanied children (as well as, of course, widowers, and men solely responsible for children). This in turn should determine the type, quantity and composition of food and non-food items distributed.
6. Data concerning the traditional systems of food distribution and assistance to the vulnerable in the community before the war and during natural disasters should be examined, as they could be useful in improving the distribution of assistance to vulnerable groups. For example, what was, and is now, the role of women's groups in the community should be investigated.

7. Monitoring of programmes should include indicators to determine whether female heads of households have their food taken away from them or “taxed”, or whether they are subjected to violence after distribution, e.g. to oblige them to give food to soldiers or others. In countries where “gender preferencing” for food is practised in the community, there should be careful monitoring of the impact of programmes on nutrition to ensure that sufficient food is being distributed for the whole household and for those identified as vulnerable.
8. Women should be involved in all elements of assistance programmes. Such involvement can afford them better protection and assistance as specific concerns related to women can be raised and addressed throughout the programme cycle.^[300]

2. Food preparation

Food preparation includes access to the means of preparing food, firewood, fuel, stoves, cooking pots and utensils. It also encompasses the time and risks involved in preparing food in contexts where food may have a high value, owing to its relative scarcity and the security constraints imposed by the armed conflict, displacement and the absence of the norms and values which protect particularly vulnerable members of the population. Water, which is essential in the preparation of food, is covered in the next section.

a) OVERVIEW OF PROBLEM

Women are generally in charge of food preparation in the family. They have to have access to the means to prepare food for household needs. In times of armed conflict, this role can put women in a particularly vulnerable position, which can be exacerbated by the absence of male relatives. It is regularly documented that women and girls are particularly vulnerable to attack and injury when collecting and searching for firewood, as this task may lead them into areas of danger and take them long distances away from their homes. This problem is particularly acute in front-line areas or camps for internally displaced persons or refugees. In such situations the danger may result from mines and unexploded ordnance and from the risk of attack and sexual violence. Women may also be restricted from leaving the town or the camp for security reasons, or because they risk being accused of spying or assisting the enemy.

When women flee in haste they often have to leave behind their cooking pots and utensils, which are valuable and expensive items to replace. Possessions are also destroyed in the fighting. Therefore women in these situations need to be provided with cooking pots and the means to cook and prepare food for the household. Their

access to a reliable and safe supply of cooking fuel also needs to be taken into consideration when assistance programmes are planned.

It is also important to consider environmental protection, a role in which women are often involved for the preservation of their natural environment, but which is often neglected in areas where there are displaced persons camps.

b) REVIEW OF INTERNATIONAL LAW

The rules relating to security of the person discussed above (see section on *Safety*) and those relating to the right to food (see section on *Food*) are all pertinent to the question of food preparation, which is not addressed specifically by international humanitarian or human rights law.

c) THE ICRC'S OPERATIONAL RESPONSE

Where assessments have indicated that the civilian population is in need of cooking materials, for example, because they were forced to flee their homes without any belongings or their homes were looted or destroyed, the ICRC provides material assistance for the preparation of food, such as kitchen sets, including cooking pots, plates, cups, utensils and stoves.

The ICRC has carried out studies on the use of solar energy, renewable sources of energy and traditional fuel in internally displaced persons' and refugee camps (and also in detention centres, community kitchens, schools and health centres). The effect on the environment of distributing wood, coal and heating oil in emergency housing programmes has been studied, and new products have been proposed, such as a community cooker which has "the advantage that it consumes 50 to 60% less wood than traditional half-drums placed on three stones".^[301] Such products or tools are mainly used by women, since it is they who tend to take on the role of the family carer for cooking and providing food.

d) KEY POINTS

1. To enable women to have safe and secure access to the means of preparing food, wherever security problems prevail in a region, it is recommended that fuel-saving stoves and food that requires limited cooking be distributed. An assessment of cooking requirements should be made beforehand to ensure that the assistance is appropriate to needs and will be used, i.e. that women can cook the local food provided, and that fuel sources and stoves are used.
2. Where women have to travel in search of cooking fuel, especially women in

displaced persons' camps, monitoring of the security situation and the use of security patrols should be encouraged as a means of reducing the risks.

3. In responding to the basic and pressing needs of the civilian population, notably women, environmental damage should be avoided.

3. Water

Access to adequate water (in terms of both quantity and quality) for cooking, drinking and washing purposes is a necessity for preserving a population's good level of health. Furthermore, in rural areas, water is necessary for irrigation purposes.

“Most of what is known about preventing illness during emergency situations comes from the study of illnesses in populations during peaceful, stable circumstances which permit careful scientific investigations. (...) There is a profound need for research to quantify the association between water availability and human suffering during crises.”^[302]

a) OVERVIEW OF PROBLEM

Women need access to safe water for drinking and food preparation as well as for other household purposes (see also section on *Hygiene*). It is often women and children who collect and transport water from its source outside the household, and who are responsible for storing and using it in the household. Thus women have knowledge about water sources and related issues.

In situations of armed conflict, access to adequate quantities of good-quality water can become particularly difficult in urban areas which are reliant on man-made infrastructure and technical input or in rural areas where access to water is restricted for security reasons. Water sources and infrastructure may also be deliberately targeted or become inaccessible during fighting. There is also often a lack of maintenance of existing water systems, which exacerbates the problem of the quality of water and/or access to water.

Civilians often have to leave their homes and seek water in hostile environments.

Displaced populations may also have limited access to water as existing water sources are only sufficient for or accessible to the resident population. Safe water may have to be brought into camps for the displaced by water truck and distributed by tapstands. An increase in water-borne and water-washed diseases (diarrhoeal diseases, typhus, hepatitis A, cholera, etc.) is an immediate sign of failure to deal with these problems. In the worst situations “water shortages reduce food production, aggravate poverty and disease, spur large migrations and undermine a state's moral authority”.^[303]

Women and girls may be particularly affected, as in many societies they are traditionally responsible for water collection. This responsibility can greatly increase the risk of violence and injury, for example from landmines or attacks.

The place where water sources are located and the means of extracting it need to be accessible to, and usable by, women. Water containers need to be of a size and weight that women can carry.

b) REVIEW OF INTERNATIONAL LAW

The rules of international humanitarian law set out above concerning food (see section on *Food*) also apply to water. In fact, the provisions of the Additional Protocols protecting objects indispensable to the survival of the civilian population expressly prohibit *inter alia* attacks against drinking water installations and supplies and irrigation works.^[304] The question of the supply of drinkable water to persons deprived of their freedom is addressed expressly in a number of provisions of the Geneva Conventions and the Additional Protocols. They will be discussed in the section which deals with detention.

The question of access to drinkable water is also implicitly addressed in the rules of human rights and refugee law relating to food. Additionally, drinking water is expressly dealt with in two specific instruments: the Convention for the Elimination of Discrimination against Women requires States Parties to take appropriate measures to eliminate discrimination against women in rural areas, and in particular to ensure that such women have the right to enjoy adequate living conditions, including in relation to sanitation and water supply.^[305] Similarly, the health provisions of the Convention on the Rights of the Child require States Parties to take appropriate measures *inter alia* to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water.^[306]

Finally, it should be borne in mind that the rules protecting personal safety and ensuring freedom of movement are also relevant to the issue of access to drinkable water.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC's objective is to ensure that victims of armed conflict have access to adequate quantities of good-quality water for drinking and for domestic use and to preserve the habitat that protects the population against environmental hazards. The immediate aim is to maintain a good level of health among a population and/or to reduce the morbidity, mortality and suffering caused by a breakdown in the water supply. ICRC activities include the rehabilitation of water treatment plants, distribution networks or gravity-fed water systems; the construction of wells; the harnessing and

protection of water sources; the construction of water storage facilities; and the purification and distribution of drinking water.

Although ICRC activities concerning water and habitat usually do not specifically target women, women do benefit from these projects as they are the collectors of household water. In the Republic of the Congo it was observed that 80% of the persons collecting water were women and 20% were children (mainly girls) at water distribution points set up in ICRC-run camps for the displaced.

In Iraq, the ICRC has been conducting a large-scale programme for the repair of water and sewage systems as part of a public health project for the civilian population. “In 1998, the ICRC has completed 26 water projects, benefiting 3 million people. Lately, women in Iraq have been faced with more and more new challenges and have taken over, partially or completely, the lead from men at home and even outside. Important responsibilities have been automatically transferred to them (financial contribution, better allocation of resources in order to optimize the functioning of the family, nutrition, education), while men are still spending most of their time trying to find a decent job. The ICRC does its best to minimize the number of women using polluted water (...) It means less disease and therefore less time spent with sick children and more time to organize family life and for education.”^[307]

d) KEY POINTS

1. Water distribution points should not be located in proximity to the armed conflict, armed forces or military objectives.
2. Traditionally, women and girls are often the members of the family who are responsible for the collection of water for household needs. The availability of a water source and the means of collecting and carrying water are of primary concern for these women and girls, who should be included throughout programmes and activities.
3. In order to ensure that women have safe and local access to water, distribution points should be located close to dwellings, especially displaced persons' camps.
4. Furthermore, the means distributed for collecting water, e.g. jerry cans and buckets, should not be too large or heavy for women or girls to carry.

D. Sources of livelihood

1. Agriculture

Access to land and the means (hand tools and seeds) for farming provide vital social and economic security and represent the basic means of survival for many people, enabling farmers and small-holders to grow crops and keep animals. Farming and raising livestock depends on the availability of water as well as agricultural inputs and tools, veterinary care and medicines.

a) OVERVIEW OF PROBLEM

“In conflict or crisis situations, where displacement, theft, looting and the destruction of property and infrastructure are commonplace, households no longer have the necessary means of production to be self-sufficient.”^[308]

The cultivation of land is based on a clear division of labour. The preparation of land and/or the harvesting of crops may be carried out by women. Women and children are often responsible for grazing and caring for animals, especially small animals. The gendered division of labour can place women in the primary role of developing and maintaining coping strategies for the sustainability and renewability of natural resources, which are essential for the long-term survival of their family and community. Moreover, as has been mentioned earlier, women are generally responsible for producing and preparing food for family consumption, including the collection of firewood, planting and cultivation of kitchen gardens, and the search for water.^[309] Additionally, in the developing world, they provide family health care and exploit forest resources for the collection and preparation of healing herbs. For these reasons, women may be extremely reluctant to leave their land – their means of subsistence – to flee, even when faced with extreme danger from armed conflict, and to become dependent on limited aid resources. Research has indicated that fear is the primary motivation for displacement, even into unknown circumstances.^[310]

Women need access to land and water for farming activities to ensure their own basic survival and that of their families, and access to the resources needed to farm – seeds, fertilizers, tools, financial loans, and medicines for livestock. Access to land and water in times of conflict can be particularly dangerous or even impossible, for example because of the danger of attack or of unexploded ordnance and mines;^[311] or crops or water sources may be deliberately destroyed by combatants because they are deemed to provide cover or support for the enemy. Furthermore, female heads of households need the necessary means (time, resources, etc.) to utilize the land. For example, some women have reported that they generally do not graze large herds of

cattle – not only because of the distances involved in finding sufficient grazing and the shelters which have to be built to house them, but also because it is considered men’s work.^[312] The traditional division of tasks often breaks down as a consequence of conflict when menfolk are absent or the proximity of fighting restricts access to land.

Women must be able to continue their day-to-day management of natural resources for a sustainable livelihood and to maintain agricultural production and household food security. Women, especially widows or women with absent or missing male relatives, should have the right to have access to their (or their family’s) land and property in order to ensure their own survival and that of their family.

Widows, wives of the missing, or unmarried daughters without fathers are often prevented by law from having access to their land and property, which instead goes to the closest male relatives. There may be civil or religious laws, or customary practice, which govern – and sometimes prohibit – women’s rights to land ownership, for example in many African, Asian and Middle Eastern countries. “Under most systems of customary law, women are prohibited from owning, renting or inheriting land, property and housing in their own names, and access to and control over land, property and housing commonly depends on their relation to male relatives.”^[313]

In the past, tradition in some countries allowed widows to stay on their land. However, recent years have shown that male heirs increasingly prefer to sell the land or property in order to make financial gains. Consequently, women may become homeless and/or forced into prostitution or begging in order to survive.^[314] The Interregional Consultation on Women’s Land and Property Rights in Situations of Armed Conflict^[315] concluded that a pattern of discrimination against women emerged from the case studies they had undertaken for the purposes of the Consultation.^[316] In the aftermath of the genocide in Rwanda there was great concern about widows’ lack of property rights and the possibility of their being forced off farms or unable to return. As property passed through the male members of the household, widows who did not have sons risked losing their property to their deceased husband’s relatives.^[317]

Armed conflict situations can lead to forced evictions being used as a method of warfare. The process of forced eviction from property and land can also involve physical violence. Women often stay behind in their homes to look after children and elderly people, and thus are especially vulnerable in situations of land confiscation. Evictions may be accompanied by raids and looting of homes and villages, or even torture, rape, or killing of civilians. Women should be able to live in their homes and on their land, free from persecution and fear of eviction. (See also section on *Shelter*).

b) REVIEW OF INTERNATIONAL LAW

Although neither international humanitarian law nor human rights law expressly refers to a “right to carry out agricultural activities”, a number of other rules, such as the

prohibitions on starvation and on the destruction of objects indispensable to the survival of the civilian population, effectively guarantee civilians the right to a livelihood from farming. Obviously this is closely related to the issue of adequate food. While international humanitarian law imposes limitations on means and methods of warfare so as to enable civilians to continue agricultural activities during armed conflict, human rights law adds an important dimension to the issue: it recognizes the right to property and prohibits discrimination between men and women in the enjoyment of such property rights.

1) **International humanitarian law**

International humanitarian law does not expressly address the issue of access to land and the use of land as a source of livelihood. However, a number of rules regulating other issues which have already been discussed are of relevance.

International armed conflicts

The prohibition on starvation of the civilian population as a method of warfare and the destruction of objects indispensable to the latter's survival expressly includes "agricultural areas for the production of foodstuffs, crops, livestock (...) and irrigation works" as examples of such protected objects.^[318] Related to this rule are the prohibitions on the use of certain weapons, such as anti-personnel mines under the Anti-personnel Mine Convention or the mines and booby-traps covered by Protocol II to the 1980 Convention on Certain Conventional Weapons, which effectively make agricultural activities impossible. Furthermore, the rules prohibiting means and methods of warfare which cause widespread, long-term and severe damage to the environment are also relevant as these too may make farming impossible.^[319]

Also of relevance is the prohibition on the destruction of real or personal property.^[320] However, the prohibition is not absolute and destruction can be justified if rendered absolutely necessary by military operations. Protection is also afforded by the prohibition on pillage, i.e. the taking of property belonging to private individuals.^[321] While the prohibition on destruction relates to the land itself and any crops still growing, that on pillage relates to crops that have already been harvested and to livestock.

Reference should also be made to the right of free movement, as clearly civilians need physical access to the land they are going to farm. As stated above (see section on *Freedom of movement*), this right is not absolute and can be limited in situations of armed conflict for reasons of security or military necessity. If civilians are prevented from farming in such situations, it can be argued that the party that has thus curtailed their freedom of movement should provide them with an alternative source of subsistence.

Non-international armed conflicts

The express provisions applicable in non-international conflicts are more limited. However, Additional Protocol II contains the same prohibitions on the destruction of objects necessary to the survival of the civilian population and on pillage.^[322]

Individual criminal responsibility

Pillage and destroying or seizing the property of an adversary unless such destruction or seizure is imperatively demanded by the necessities of the conflict is a war crime under the Statute of the International Criminal Court when committed in international or non-international armed conflicts.^[323]

2) Human rights law

In addition to recognizing rights that are relevant to agriculture as a source of livelihood, such as the right to personal safety and to adequate food, human rights instruments also lay down another important right in connection with agriculture: the right to possess property. This right and the right to peaceful enjoyment of one's possessions is recognized in Protocol No.1 to the European Convention on Human Rights and the African Charter on Human and Peoples' Rights.^[324] What these articles add to the provisions of international humanitarian law is the express requirement that the right be granted and enjoyed without distinction on the basis *inter alia* of sex.

Although the right to peaceful enjoyment of property is not absolute and can be limited in the general interest, such limitations cannot be imposed in a discriminatory manner, for example so as to affect women only. Equality in rights to property is also expressly recognized in the Convention on the Elimination of Discrimination Against Women which *inter alia* requires States Parties to accord to women a legal capacity identical to that of men and the same opportunities to exercise that capacity, expressly including the right to administer property.^[325]

c) THE ICRC'S OPERATIONAL RESPONSE

"'If the rains don't stop early this year, I'll have enough to survive', said Athiok Kwik as she cut a stalk of the sorghum she had planted. Athiok and her daughter had left their little village during the famine last year and had gone to the town, where an ICRC feeding centre provided them with assistance. Later, when seed and tools were distributed by the ICRC, she was given her share by the community leaders." ^[326]

ICRC assistance activities aim to protect the vital means of production of conflict victims, so that they can as far as possible retain their ability to be productive and remain economically self-sufficient at the household level. Economic aid and economic rehabilitation activities aim to support conflict victims, to restore their means of production and where possible allow them to regain their economic self-sufficiency. These activities are based on the premise that one of the prerequisites for victims' success in rebuilding their lives and recovering their dignity is their ability to be as self-sufficient as possible. ICRC activities to help persons affected by armed conflict achieve self-sufficiency include the distribution of assistance such as seeds, agricultural tools, fishing tackle, agricultural inputs and the provision of livestock, veterinary

medicines and advice. Such activities are designed to provide the most appropriate response to the various humanitarian needs in a given context.^[327]

In the field of agriculture, the ICRC has helped women in different ways: for example, it has specifically targeted women heads of households for distribution of tools (pangas and sickles) where these women were the sole breadwinner in families. In Afghanistan it has developed small-scale agricultural programmes (e.g. poultry-raising, beekeeping, kitchen gardens) for women in their homes, in order to provide some assistance and a potential source of income. The kitchen garden programme provides vegetable seeds, fertilizers and tools to families headed by widows and disabled persons in an attempt to decrease dependency on food aid, reduce living costs, generate an income and strengthen coping mechanisms. The women can also receive instruction in basic agronomy techniques given at the point of distribution.

According to the delegation in Rwanda, the most successful assistance projects for women were those based on agriculture and animal husbandry. For example, small animal projects (poultry, sheep, goats) were successful, as small animals do not need so much grazing and children can watch them. Cows, however, were more difficult for women to manage as they required a shelter to be built (men's work before the war) and they needed to be taken longer distances to graze (time-consuming and dangerous).^[328] However, certain projects have failed because they have not taken sufficiently into consideration the specific constraints for women. Sometimes women heads of households could not meet the requirements for participation in such programmes because they did not have enough time; thus an essential element of future programmes will be to encourage women to organize themselves in the community in order to cope with constraints such as caring for children, especially sick ones.

With regard to access to land, the ICRC is less often involved in such issues. It does actively promote the elimination of anti-personnel mines as they are a threat to the lives of the civilian population and limit access to land. The ICRC also runs landmine-awareness campaigns in countries throughout the world, and provides assistance (health, prostheses, rehabilitation) for amputees (see also section on *Health*). In mine-awareness activities, women are an important target group, both directly and indirectly, since as role models they pass on information on safe behaviour to their children.^[329] One way of reaching them is to distribute mine-awareness material at food distribution points where they are generally in the majority, collecting food as representatives of their families.

Recognizing that land is often contaminated by weapons other than anti-personnel mines, the ICRC has proposed to the Review Conference of the UN Convention on Certain Conventional Weapons (CCW) that it deal with the problems caused by other "explosive remnants of war". The ICRC's proposal is that States parties adopt a new protocol to the CCW which would, among other things, require parties to an armed conflict to take measures to reduce the threat of unexploded ordnance, and facilitate the rapid clearance of contaminated land and the dissemination of information on mines and unexploded ordnance.

d) KEY POINTS

1. Mine and unexploded ordnance awareness programmes must be implemented in order to alert the civilian population to the presence and dangers of unexploded ordnance and mines in conflict areas. Such programmes should recognize that women and girls may be more difficult to reach because of the restrictions imposed on their mobility or access to education/public programmes, and must find means to ensure that women are duly informed.
2. Women's needs in terms of access to land should be routinely included in all medium- and long-term assistance programmes. Where their access to land is not secured, and where traditional structures and compensating mechanisms have been adversely affected by the armed conflict, the attention of the relevant authorities should be drawn to the problem.
3. Agricultural assistance programmes for women, especially those who have become heads of households, should be offered. They should be provided with means and resources for cultivating and utilizing their land. Such programmes may require an educational component if women have not been traditionally involved in such activities.
4. Special assistance should be given to women who have had to leave their land because it has been confiscated. Women in such a situation must be provided with safe shelter, food and means of survival.

2. Non-agricultural sources of livelihood

Access to work through the labour market or through economic enterprise is needed in order to provide the means for economic survival.

a) OVERVIEW OF PROBLEM

Women and men have different possessions of different value and different degrees of liquidity, which will impact differently on their possibilities of supporting themselves when their normal means of livelihood have been disrupted or destroyed owing to armed conflict. For example, men may hold wealth in cattle whereas women may have jewelry (from dowries or bridal gifts). If people are forced to flee, cattle may be left behind, lost or stolen and may be more difficult to turn into financial or other assets (especially during conflict when there is an increase in availability because others are also selling their assets). Jewelry is more easily carried and can be hidden or exchanged

for other assets (although generally with a major reduction in value as others are doing the same).

In situations of armed conflict, many forms of employment are no longer available and part of the civilian population may be unable to support itself. Women must have the possibility of gainful employment, but are often particularly affected by the scarcity of employment opportunities and discriminatory practices.

Families who have lost their primary source of livelihood are reliant on assistance in order to be able to cope. The assistance given by humanitarian organizations is needed to meet basic subsistence requirements. This is especially the case for women whose menfolk are detained and who provide food and other assistance to support their husbands in prison, and for women whose husbands are missing. Such women may be extremely traumatized and/or spending their time trying to ascertain their husbands' whereabouts. Often they are not receiving pensions or social assistance for various reasons: because the structures providing such assistance have broken down; because there are no resources to give to them; because they are not recognized by the authorities as eligible (unresolved cases of missing people, husbands in detention for acts committed in connection with the armed conflict or for supporting the opposing faction); or because they do not know about the assistance available and how to apply for it. Where there are no possibilities of earning an income or any other means of subsistence, women should be able to receive social or humanitarian assistance free from exploitation and harassment. In conflict situations, humanitarian organizations often meet many of the subsistence needs of the civilian population created by the disintegration of the country's infrastructure. In addition to direct assistance, international organizations have also launched programmes such as quick-impact projects, food-for-work projects, small enterprise development and credit schemes. Furthermore, many women in camps for displaced persons have used their material possessions and the assistance they receive to develop their own small enterprises, e.g. making clothes, brewing alcohol, bread-making, etc., which provide them with a small income.

Efforts made to provide income-generating activities for women have faced a number of challenges. While quick-impact projects may be valuable in the short-term both for the women involved and for their communities, they have rarely proven to be sustainable once external funding has ceased. It also proved to be difficult to ensure the sustainability of small enterprise development projects specifically targeting women in cases where they did not possess the necessary skills and skills training was not incorporated into the project, and/or where child-care and household commitments do not allow for consistent and full participation.^[330] As regards planning and implementation of projects, often women are not consulted or included, to the detriment of the success of the projects.

In the Republic of the Congo, for example, it was observed that it was often women in camps for the displaced who started small trade activities by selling bread, fish, etc. Furthermore, single-parent households generally had more problems in regaining economic self-sufficiency – they were less productive and had less money to

spend on food than other households. They wanted any assistance given to focus on helping them to regain their economic independence. The women proposed various means, such as the provision of new agricultural tools or micro-credit, and assistance in obtaining copies of professional certificates lost in the war.^[331]

b) REVIEW OF INTERNATIONAL LAW

Agriculture, discussed in the previous section, is not the only form of work that may be carried out by civilians in situations of armed conflict, although in practice it may be the predominant one. It is therefore also necessary to consider the rules governing other forms of employment. As with agriculture, the issue of employment is also related to the right to adequate food and to freedom of movement.

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1) International humanitarian law

International humanitarian law only marginally addresses the question of employment and the aim of the few provisions that do exist is to protect civilians against forced labour and dangerous work and from being compelled to participate in the hostilities against their State of nationality.^[332]

That being said, international humanitarian law does include some provisions which in practice protect the “right to work” of certain specific groups of civilians. With regard to aliens in the territory of a party to an armed conflict, the Fourth Geneva Convention provides that if such persons have lost their gainful employment as a result of the conflict, they must be granted the opportunity to find alternative paid employment. Subject to security considerations, such opportunity must be equal to that enjoyed by the nationals of the State in whose territory they find themselves.^[333] This provision is of particular relevance to nationals of the enemy side who may otherwise find themselves in a precarious situation. This right to seek employment may be limited by the security concerns of the host State, but if methods of control – such as internment – are applied by the host State and result in the aliens’ being unable to find employment, the State must support the aliens and their dependants.^[334]

In situations of occupation, the Fourth Geneva Convention prohibits the Occupying Power from taking “all measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory in order to induce them to work for the Occupying Power”.^[335]

2) Human rights law

The right to work is recognized in a number of universal and regional human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, the Additional Protocol to the American Convention on Human Rights and the African Charter on Human and Peoples’ Rights.^[336] These rights are fulfilled progressively, and, although absolute, can be suspended in times of emergency. As in the

case of the right to property, the importance of these provisions lies in the fact that they must be granted without discrimination on the basis *inter alia* of sex.

The same approach is adopted by the Convention on the Elimination of Discrimination Against Women, which requires parties to take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the same rights on a basis of equality between men and women, in particular the right to work as an inalienable right of all human beings, and the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.^[337]

3) Other bodies of law

The 1951 Refugee Convention also addresses the question of employment, requiring parties to grant to refugees within their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances as regards the right to engage in wage-earning employment.^[338]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC provides assistance to persons affected by armed conflict, including for example displaced persons who have lost their means of subsistence, families of men who have gone missing and widows who have lost their breadwinners, in the form of food and other basic essentials such as clothing, the means to set up income-generating projects, plastic sheeting to repair shelters, mattresses, kitchen sets and school uniforms for children.

To date, the ICRC has launched a number of income-generating projects. In Afghanistan, it developed some work-at-home projects for women (production of bags, crocheting of blankets, dressmaking, wool-spinning and knitting of jumpers), giving the women wheat flour as payment. The ICRC used the jute bags produced for food distribution and the knitted clothes and quilts for winter distributions.

In several countries the ICRC has provided sewing machines and material to develop existing or set up new tailoring workshops as a means of generating income for vulnerable groups, particularly widows or women heads of households.

d) KEY POINTS

1. Programmes designed to assist the civilian population to achieve a measure of self-sufficiency should focus on women and be accessible to them. For this to be the case, the particular constraints placed on women have to be taken into consideration. These include factors such as the daily and seasonal calendar requirements – farming, water collection, household tasks, children's education and child-care

commitments. If such factors are taken into consideration, programmes for women are more likely to succeed.

2. Projects designed for women must be as well planned and sustainable as programmes “traditionally” intended for men. This includes finding culturally sensitive ways of allowing women to participate, while meeting their child-care and household obligations, and of providing the necessary education and training. Women should not be given “marginal” projects which are not sustainable just to include them in the programming. Effects of armed conflict on women also need to be taken into consideration in the design of projects and the support and training offered to participants.
3. Women need access to income-generating projects to help them become more self-sufficient. This may necessitate the development of new skills. Furthermore, for programmes to be successful, women must have access to markets (logistics, security) and marketing skills (financial knowledge) to be able to sell their produce. Where women do not already have such skills, the necessary training should be included in projects. Women should be consulted in the planning, implementation and evaluation stages of income-generating programmes.

E. Shelter

1. Accommodation

Shelter includes basic structures such as tents and the complementary input of clothing, blankets and heaters. This is an urgent basic need when accommodation has been damaged or destroyed or a population is displaced as a result of conflict. Access to adequate shelter is a fundamental prerequisite for well-being, health and even survival. To be adequate, shelter must give protection from the elements (snow, wind, sun), offer security against violence, provide privacy and meet cultural requirements.

a) OVERVIEW OF PROBLEM

Women need housing which is adequate to protect themselves and their families from climatic conditions and exposure to security risks and to maintain health and dignity. Shelter should also include bedding as used locally and suitable for climatic conditions.

One of the frequent consequences of armed conflict is that people lose their homes. People may be forced to flee, houses may be destroyed or damaged; there may

be serious obstacles to returning because the situation remains dangerous or houses are occupied. This means that large numbers of people live in temporary shelter, including in camps for the displaced and refugee camps, and since it is uncertain when they can return or how long they can remain in their temporary location, there is often resistance to making major investments in improving this accommodation.^[339]

At first glance it appears that men and women are equally affected by such problems. However, the majority of persons affected – among those remaining in their home areas and those that are displaced – are women and children. As indicated previously, the large number of women heads of households and/or widows reflects the reality that male relatives are often conscripted or detained or have fled the country for security reasons. Thus women need to be assisted in finding, repairing or constructing housing, especially where heavy construction work is involved, such as cutting wood and building structures.

Female heads of households should also receive assistance to ensure that they have accommodation which provides them with basic protection and security, and also safe access to sanitary facilities. Women should be consulted on all aspects of their accommodation needs.

Displaced women, especially those heading households, need accommodation in a safe place. For example, in a camp setting, the suitability of shelter for women is determined by its location (away from the camp perimeters, close to well-lit latrines and washing facilities to minimize the risk of attack when using them). Furthermore, their shelter should not be distinguishable from that of other displaced persons so that they cannot be easily identified and targeted as lone women. Necessary measures may also include practical steps such as having female security officers involved in the patrolling of camps or appropriate fencing and lighting to deter night raids.

Women should not be forcibly evicted from their homes or land. Forced eviction is used as a part or a means of warfare, especially where the main dispute is over who controls which area and how much land (and/or, in some cases, water). Parties to an armed conflict may organize the demolition of houses and confiscate land or refuse to issue property documents, residents' permits or the necessary building permits. As the life of many women focuses on activities in and around the home, women are severely affected by such practices. House destruction can be particularly traumatic for women: they may have to face the soldiers/evictors without the support of their male relatives if it is a time of the day when the husband has left for work, or if he is displaced, missing or detained. Evictors normally arrive without warning, and the family may be given only minutes to gather all their belongings before the house is torn down or possessed by others. Moreover, family members may be beaten, injured or even killed to force them to leave their houses or land.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

International humanitarian law recognizes that shelter provides fundamental protection for civilians in situations of armed conflict. Accordingly, there are numerous rules intended to ensure the provision of adequate shelter in different ways. First, there are rules whose objective is to ensure that civilians' dwellings are not attacked and civilians are not arbitrarily displaced. Secondly, in situations where such protection has proved insufficient or civilians have nevertheless been displaced, international humanitarian law provides that they must be given adequate accommodation during their displacement. Finally, international humanitarian law envisages the possibility for parties to a conflict to establish protected zones in which certain categories of civilians can find shelter during conflicts. Some of the measures relating to humanitarian relief and to safety zones provide specific additional protection for women.

International armed conflicts

i) Protection of civilian objects

The fundamental principle of international humanitarian law which prohibits belligerents from targeting civilians and civilian objects provides protection for civilian dwellings. This rule is expressly spelled out in Additional Protocol I, which provides that "civilian objects shall not be the object of attack or reprisals".^[340] The term "civilian objects" covers dwellings and shelters, unless they have lost this protection because they have been used to make an effective contribution to military action, and their destruction in the circumstances prevailing at the time offers a definite military advantage.^[341] Recognizing the inherent difficulty of applying this rule in practice, the Protocol provides that "in case of doubt whether an object which is normally dedicated to civilian purposes, such as (...) a house or other dwelling (...), is being used to make an effective contribution to military action, it shall be presumed not to be so used".^[342]

This rule protecting civilian property is reinforced by numerous other provisions, such as the rule, applicable in situations of occupation, which prohibits any destruction of real or personal property belonging to private persons unless such destruction is rendered absolutely necessary by military operations;^[343] and the prohibition on pillage and reprisals against the property of protected persons – even though this rule relates to the contents of the dwellings rather than to the structures themselves.^[344] Finally, mention should be made of the prohibition on collective punishment, which in practice has often taken the form of the destruction of private dwellings.^[345]

ii) Prohibition on arbitrary displacement

In addition to these rules protecting dwellings, the norms prohibiting arbitrary displacement of civilians discussed above (see section on *Freedom from arbitrary displacement*)

are also of direct relevance to the question of shelter as they aim to ensure that persons do not have to abandon their dwellings.

In situations where persons have been forced to do so despite this prohibition or have been evacuated, the issue of the provision of shelter during their displacement becomes relevant. With regard to evacuations – i.e. situations of occupation in which the civilian population has been displaced for its own security or for reasons of imperative military necessity – the Occupying Power must ensure, to the greatest practicable extent, that proper accommodation is provided for receiving the evacuees.^[346]

iii) Humanitarian assistance

The issue of shelter is also addressed in the provisions of international humanitarian law which deal with humanitarian assistance. For example, regardless of whether or not the civilian population has been displaced, in situations of occupation Additional Protocol I requires the Occupying Power to ensure, to the fullest extent of the means available to it and without any adverse distinction, the provision *inter alia* of bedding, means of shelter and other supplies essential to the survival of the civilian population of the occupied territory.^[347]

In situations other than occupation where the civilian population of a party to a conflict is not adequately provided with the aforementioned supplies, humanitarian and impartial relief actions must be undertaken, and priority must be given to children, expectant mothers, maternity cases and nursing mothers.^[348]

Also of relevance to the question of adequate shelter are the rules of international humanitarian law on civil defence. Civil defence is the performance of specified humanitarian tasks intended to protect the civilian population against danger, to help it to recover from the immediate effects of hostilities and disasters and to provide the conditions necessary for its survival. These humanitarian tasks expressly include the management of shelters and the provision of emergency accommodation and supplies.^[349] Additional Protocol I requires parties to a conflict to respect and protect civil defence organizations and their personnel and to allow them to perform their tasks.^[350] With regard to the provision of shelter, the Protocol expressly states that “buildings and material used for civil defence purposes and shelters provided for the civilian population” are civilian objectives and may not be destroyed or diverted from their proper use except by the party to whom they belong.^[351]

iv) Safety and neutralized zones

Recognizing that in times of conflict civilians’ ordinary dwellings may not provide sufficient protection, the Fourth Geneva Convention provides that the parties to a conflict may conclude agreements to establish and respect “safety zones and localities” to protect from the effect of hostilities wounded, sick and aged persons, children under the age of fifteen, expectant mothers and mothers of children under the age of seven.^[352] In practice this provision has proved of limited effectiveness as parties have only rarely concluded such agreements. The Convention also envisages a somewhat

more practical provision for the establishment in the areas where fighting is taking place of “neutralized zones intended to shelter from the effects of war (...) civilian persons who take no part in the hostilities, and who perform no work of a military character”.^[353]

Non-international armed conflicts

The rule prohibiting attacks on civilian objects is also applicable in non-international conflicts. Rules protecting civilians’ dwellings can be inferred from a number of provisions. For example, the destruction of houses or denial of shelter can, in certain circumstances, amount to inhuman treatment and thus be prohibited by common Article 3; collective punishments, which, as stated, often take the form of the destruction of dwellings, are prohibited by Additional Protocol II, as is pillage.^[354]

Individual criminal responsibility

Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully is considered as a war crime under the Fourth Geneva Convention.^[355] Moreover, wanton destruction or seizure of the enemy’s property unless this is imperatively demanded by the necessities of war, and pillaging a town or place are war crimes under the Statute of the International Criminal Court when committed in international or non-international armed conflict.^[356]

Intentionally directing attacks against civilian objects, intentionally launching an attack in the knowledge it will cause *inter alia* damage to civilian objects which would clearly be excessive in relation to the concrete and direct overall military advantage anticipated and attacking by whatever means towns, villages, dwellings or buildings which are undefended and which are not military objectives are war crimes when committed in international armed conflicts.^[357]

2) Human rights law

Human rights instruments focus on the question of shelter from three different angles: firstly, that of the right to property, which has been discussed above (see section on *Sources of livelihood*); secondly, that of the prohibition on arbitrary interference with persons’ homes; and, thirdly, that of the right to an adequate standard of living, including shelter.

Protection against unlawful interference with persons’ privacy, family, home or correspondence is recognized in the International Covenant on Civil and Political Rights and the European and American Conventions on Human Rights.^[358] This right is of particular relevance to forced evictions.

The International Covenant on Economic, Social and Cultural Rights recognizes the right to “an adequate standard of living including adequate food, clothing and housing”.^[359] The right to adequate housing is also included in the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women.^[360] As is the case for a number of the rights discussed

in earlier sections, the right to adequate housing is not immediately enforceable; and instead, it is one that States must achieve progressively. Its relevance lies in the fact that it must be granted without distinction *inter alia* on the basis of sex.

3) Other bodies of law

As regards housing, the 1951 Refugee Convention requires host States to accord to refugees lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.^[361]

Recognizing the importance of property issues in the aftermath of conflicts marked by important population movements, the Dayton Peace Agreement of 1995 established the Commission for Real Property Claims of Displaced Persons and Refugees.^[362] The Commission determines the claims of persons who have lost real property in Bosnia-Herzegovina during the conflict in the former Yugoslavia, providing dispossessed persons with final and binding decisions on their property claims, even if they are without occupancy-right or ownership documents to support those claims. By June 2001 the Commission had received just under 300,000 claim applications.^[363] In August 2000 the United Nations Centre for Human Settlements launched a similar project in Kosovo: the Housing and Property Directorate and the Housing and Property Claims Commission.^[364]

c) THE ICRC'S OPERATIONAL RESPONSE

In the first phase of an emergency the ICRC provides basic material such as plastic sheeting, tents, clothing, blankets and bedding to ensure minimum protection against the elements. At a later stage assistance may be provided for the reconstruction and rehabilitation of buildings which are essential for the community, e.g. schools, hospitals and orphanages. The ICRC also makes representations to parties to an armed conflict to try to ensure respect for the civilian population and their homes.

Specific examples of ICRC activities for women include the provision of roofing material for reconstruction of housing for widows, for instance in Sri Lanka, plastic sheeting for displaced households headed by women, for instance in Kenya, and blankets and mattresses for widows, for instance in Tajikistan.

d) KEY POINTS

1. Parties to an armed conflict must ensure the necessary security conditions for women to be able to remain in their homes and not become displaced.
2. When they are forced to flee, appropriate shelter must be provided, with adequate security and living conditions for the displaced in camps. The special needs of women must be taken into consideration: access to shelter and sanitary facilities in

conditions preserving their dignity, protection from harm from outside and within the camp and adequate lighting.

3. Women should be able to obtain assistance in repossessing and/or rehabilitating their homes in the form of materials, loans or legal and practical advice and in a way that addresses their particular needs. For instance, women may not be able to make use of roofing materials which are being distributed, and additional support for reconstruction is required. This can be provided through food-for-work programmes in which mobile construction teams are employed. In the numerous situations where women's and men's tasks are determined according to gender, family or cultural roles, households headed by women may be in particular need of legal advice and practical support with respect to administrative procedures and dealings with the authorities in order to present and defend their claims for shelter.

2. Clothing

Adequate clothing is necessary to preserve health and dignity and to ensure mobility outside the home.

a) OVERVIEW OF PROBLEM

Clothing, especially in periods of armed conflict when resources are scarce, is a commodity that many people cannot afford when they are struggling for survival. In particular, clothing may become too expensive to purchase or may be unavailable. This problem acutely affects children; for example, lack of shoes and warm clothes often prevents them from attending school in winter. Tradition may lead parents to give scarce resources to boys as a priority, so that girls are disproportionately affected. Assistance should be provided to enable children, especially those of school age, to be properly clothed.

Tradition or religion may also dictate that women and girls dress in a certain manner. This dress code can affect their mobility and security and can identify them as members of a particular religious or ethnic group. In some societies, clothing of certain colours may indicate affiliation with a particular social, political, religious, ethnic or military group.

Women and girls of menstruating age need culturally appropriate sanitary material and sufficient clothing (see *Hygiene* section) to be able to wash and dry their clothes and to maintain their dignity and health. Menstruation can be a particularly traumatic time for women and girls if they do not have or are not provided with sufficient clothing and sanitary material.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

International armed conflicts

References to clothing in international humanitarian law appear in the context of relief actions for the civilian population, clothing being listed as one of the relief items in question. For example, in situations of occupation, if the population is inadequately supplied, the Fourth Geneva Convention requires the Occupying Power to agree to relief schemes and to facilitate them by all means at its disposal. Clothing is expressly mentioned as forming part of such relief schemes.^[365]

With respect to relief actions for the population of a party to a conflict not living in occupied territory, the Fourth Geneva Convention requires all States to permit the free passage of all consignments of essential clothing intended for children under 15, expectant mothers and maternity cases.^[366] Additional Protocol I specifies that priority in the distribution of relief be given to persons accorded privileged treatment or specific protection under the Fourth Geneva Convention, namely children, expectant mothers, maternity cases and nursing mothers.^[367]

Also of relevance, principally in situations in which civilians are intentionally deprived of clothing, are the rules prohibiting outrages upon personal dignity, in particular humiliating and degrading treatment.^[368]

Non-international armed conflicts

Article 18 of Additional Protocol II, which regulates relief actions in non-international conflicts, does not expressly mention clothing. However, in cold climates, warm clothing may be considered an “essential supply” for the survival of the civilian population within the meaning of Article 18. Similarly, the rules prohibiting outrages upon personal dignity, in particular humiliating and degrading treatment, are also applicable in non-international conflicts.^[369]

2) Human rights law

Two human rights norms are of relevance to the issue of clothing: those ensuring an adequate standard of life and those prohibiting inhuman and degrading treatment. While all the universal and regional instruments contain a prohibition on cruel, inhuman and degrading treatment,^[370] only two instruments expressly include a reference to adequate clothing: the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.^[371]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC provides assistance in the form of clothes or material for making clothes for needy members of the civilian population who have lost their possessions as a result of the armed conflict.

d) KEY POINTS

1. Given the importance of clothing for health, identity, security and mobility in different contexts, it is necessary to examine the implications of clothing when carrying out distributions of food and non-food assistance. Where lack of clothing impedes the mobility of the target population, it may be necessary to arrange for assistance to be distributed directly to particularly vulnerable households.
2. Women and girls, made particularly vulnerable by armed conflict, may need to be provided with sufficient culturally appropriate clothing and sanitary material.
3. When second-hand items of clothing are being distributed, it should be verified that they are in good condition and do not offend the dignity of the recipients.

F. Health

1. Health and medical care

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Women's health involves their emotional, social and physical well-being and is determined by the social, political and economic context of their lives, as well as by biology. A major barrier to women's achieving "the highest attainable standard of health is inequality, both between men and women and among women in different geographical regions, social classes and indigenous and ethnic groups".^[372] Maintenance of health depends on the fulfilment of numerous other needs, such as availability of food and drinking water, adequate shelter, access to washing and toilet facilities and security.

a) OVERVIEW OF PROBLEM

The health problems facing women and men differ according to their different biological roles, but also reflect their status in society.

Some factors affecting women's health are already a problem before the armed conflict but are exacerbated by hostilities, while others are direct consequences of the conflict.

In some countries and cultures, when resources are scarce, it is often true that girls have less access to schooling and further education than boys. It has been recognized that female illiteracy has an adverse effect on child survival and on health, and a healthy lifestyle can be associated with higher fertility rates. There may also be cultural barriers

to seeking health care. Women may be constrained by household and domestic tasks or cultural norms, such as child-care or being allowed to travel only if accompanied by a male relative, which prevents them from travelling long distances to obtain medical care. Furthermore, in some countries it is required that women and men be treated separately, or that medical treatment be carried out by medical personnel of the same sex, or that traditional methods be adhered to.

In some communities, and because of economic constraints, the limited resources available to pay for medical treatment are spent on the men of the household rather than the women or children. In armed conflicts, when normal patterns of living are disrupted, these cultural and religious requirements can make it difficult for women to gain access to or receive appropriate health care. On the other hand, it is widely recognized that women play an important role in maintaining the health and welfare of their family and community members, through practice or learned skills, and that this role is essential in the prevention and management of sickness and diseases.^[373]

Direct consequences of conflict which are common to women, men and children are an increase in communicable diseases, the risk of epidemics, nutritional problems and a limited access to health care.

Women and girls are often physically more susceptible to illness than men owing to their sexual and reproductive role.^[374] Reproductive health care is a vital need for women^[375] and generally covers the following five areas: safe motherhood, protection from sexual violence, family planning, prevention and treatment of sexually transmitted diseases, including HIV/AIDS, and emergency obstetric care. Limited access to health services or their reduced capacity can lead to problems being left untreated; it is especially common to disregard the provision of health care for pregnant women.

Women need to receive proper pre- and post-natal care, the means for safe deliveries and access to emergency obstetric care as well as medical care for their children. Approximately 30 million pregnant women worldwide “are likely to develop complications that will require skilled obstetric care to prevent death or serious morbidity”.^[376] In developing countries, pregnancy and childbirth are major causes of death, illness, and disability among women of reproductive age.^[377] For women, reproductive health is a major concern. The age at which they become sexually active, the frequency of pregnancies and the quality of the care (antenatal care as well as assistance during birth) they receive are critical factors in determining their general health status. Maternal mortality remains a leading cause of preventable death in many developing countries and its incidence is closely related to the status of women in society.

In countries where women have access to family planning, they still need such services during an armed conflict. Women in conflict and displacement situations may find themselves at greater risk of becoming infected with sexually transmitted infections, including HIV/AIDS, because they may be forced to have sex in exchange for food, water or the protection necessary to guarantee their survival and that of their children. The increased prevalence of sexually transmitted infections (STIs) and HIV/AIDS has been attributed partially to the increase in sexual violence against

women – in particular rape committed by combatants sometimes knowingly carrying the HIV virus – and sexual relationships between soldiers and women.

Sexually transmitted infections can have grave consequences for women, including infertility, pelvic inflammatory disease, abortion, puerperal infection,^[378] ectopic pregnancy and cervical cancer. HIV/AIDS infection represents a major risk for men, women and children alike, particularly in Africa.^[379] Women can be at greater risk. Among women aged 15 to 44 in developing countries, maternal diseases and HIV/AIDS/STIs represent 22% of the total burden of disease and disability; among men of the same age group HIV/AIDS/STIs represent 3% of the burden (1998 data).^[380] In many countries, donor blood is still not tested for HIV and may originate from high-risk donors. Especially in armed conflicts, the necessary resources for providing safe blood donations may be limited. In developing countries 56% of pregnant women are anaemic, and in Asia and Africa up to 7% of pregnant women suffer from severe anaemia.^[381] These women constitute a high-risk group, in need of blood transfusions during and after childbirth. In developing countries, the transmission of HIV from infected pregnant women to their newborn babies occurs in 25-40% of cases; in one-third of these cases HIV is transmitted by breast-feeding (if no anti-retroviral treatment is provided).^[382]

Female genital mutilation (FGM)^[383] is a practice performed on millions of women and girls, predominantly in the Middle East and Africa, but also in other countries throughout the world. FGM can affect the health and well-being of women and girls. A girl may undergo the procedure in order to be deemed marriageable; FGM is also considered a rite of passage to womanhood, purification to improve hygiene, a protection from evil spirits and an assurance of virginity and fidelity to the husband. The procedure (often carried out without anaesthesia) can be extremely painful and, practised in an unclean environment, can result in infections of the genital area. Immediate effects on health can be very serious and can include severe pain, shock, haemorrhage, tetanus, hepatitis and urine retention. FGM can cause complications for pregnant women; it increases the risk of obstructed labour which in turn increases the risks for the unborn baby. In armed conflicts, the practice of FGM often continues, especially in camps for displaced persons or refugees. Women and girls should be able to receive appropriate medical care, and health-care workers need to know how best to help women and girls who have undergone this practice. In terms of preventive action, WHO, UNICEF and UNFPA have published a joint policy statement on FGM to promote policy development and action at the global, regional, and national levels. Other organizations have also taken up an active advocacy role.

Malaria is a major health problem in many countries. In recent years there has been an increasing number of malaria epidemics in endemic areas. This is due to many factors, including wars and disasters, which play an obvious role in the displacement of populations. In areas with endemic malaria, most women will begin their pregnancies with some levels of immunity. In these populations, malaria increases the risk of maternal anaemia, abortion, stillbirth, premature birth and low birth weight. Women in their

first pregnancy are especially at risk.^[384] They are more likely to develop cerebral and other forms of severe malaria.

Women and children need access to immunization. Expanded programmes on immunization accompanied by vitamin A supplements is the most cost-effective form of preventive health care. The immunization of mothers and children is one of the most important facets of maternal and child health services. Worldwide, over 800,000 child deaths and 50,000 maternal deaths are prevented every year by immunizing women against tetanus.^[385] Approximately 80 million women living in areas where there is a high risk of neonatal tetanus still need to be immunized.^[386] Among displaced populations, several factors increase the risk of neonatal tetanus, for example, poor hygiene, home deliveries and disruption of immunization services.

Women must receive health education as they are usually responsible for children and for health care in the family. Women need to be supported and assisted in maintaining this role as well as in maintaining their own health, as providing health care for the family can take an exacting toll on women's health and well-being.

Besides experiencing difficulties in obtaining access to specific medical services in wartime, women may also face serious problems in gaining access to general medical care owing to discrimination, either because they belong to a group which is targeted on the basis of nationality, ethnic origin, religion or culture, or simply because they are female. Women may be exploited when requesting medical assistance, having to pay for it even when it is supposed to be free, or may be abused by the people who are supposed to be there to help them.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

International humanitarian law contains numerous provisions aimed at preserving the health of civilians in situations of armed conflict. On the preventive side, the rules discussed in previous sections protecting civilians from the effects of hostilities or from abuse or violence and guaranteeing them adequate food, shelter and clothing can be seen as important means of ensuring that the civilian population remains in good health. The present section will provide an overview of rules specifically concerning the health of civilians.^[387]

The rules expressly focusing on health fall into various categories: those relating to persons in actual need of medical assistance; those protecting medical establishments, personnel and supplies; and those relating to relief actions. Many specifically identify women as being entitled to special or preferential treatment.

International armed conflicts

i) *Special measures for the wounded and sick*

A basic rule of international humanitarian law is that the wounded and sick must be

respected and protected. The Fourth Geneva Convention specifies that “the wounded and sick, as well as the infirm and expectant mothers, shall be the object of particular protection and respect”.^[388] This duty to respect the wounded and sick, even if they belong to the adverse party, is binding on both combatants and civilians.^[389] The Fourth Geneva Convention and Additional Protocol I contain numerous provisions on the practical implementation of this principle. For example, under the Convention, parties to a conflict must facilitate the steps taken to search for the wounded.^[390] With regard to besieged areas, the Convention requires belligerents to endeavour to conclude local agreements for the removal from besieged or encircled areas of the wounded, sick, infirm, elderly, children and maternity cases, and for the passage of medical personnel and equipment to such areas.^[391]

Additional Protocol I builds upon these general rules, and expressly lays down the fundamental principle of international humanitarian law that all the wounded and sick, whichever party they belong to, must be respected, protected and treated humanely, and that they are entitled to receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition, without distinction being drawn between them on any grounds other than medical ones.^[392] Related to this rule is the principle of protection of medical duties: no one can be penalized or punished for having provided medical assistance, in particular when this is done for the benefit of someone belonging to the adverse party.^[393] Such protection is granted both to medical personnel and to members of the civilian population who provide the medical assistance.^[394]

ii) Medical needs of the civilian population in situations of occupation

The Fourth Geneva Convention contains numerous provisions relating to the medical needs of civilians in situations of occupation: to the fullest extent of the means available to it, the Occupying Power must provide the population with food and medical supplies and should bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are insufficient.^[395] Furthermore, it may only requisition medical supplies available in the occupied territory if the requirements of the civilian population have been taken into account.^[396]

Similarly, to the fullest extent of the means available to it, the Occupying Power must ensure and maintain medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of prophylactic and preventive measures necessary for combating the spread of contagious diseases and epidemics. When adopting measures relating to health and hygiene, and in their implementation, the Occupying Power must take into account the moral and ethical sensitivities of the population of the occupied territory.^[397]

Finally, the Convention prohibits the Occupying Power from hindering the application of any preferential measures in regard to food, medical care and protection against the effects of war which may have been adopted prior to the occupation in

favour of children under fifteen, expectant mothers and mothers of children under seven years of age.^[398]

Additional Protocol I requires the Occupying Power to afford civilian medical personnel every assistance to enable them to perform to the best of their ability their humanitarian functions, and prohibits it from requiring that in the performance of these functions such personnel give priority to the treatment of any person except on medical grounds.^[399]

iii) Protection of medical establishments, personnel and supplies

The protected status of civilian hospitals organized to provide care for the wounded and sick, the infirm and maternity cases is recognized by the Fourth Geneva Convention, which expressly protects them from attack.^[400] Protection will cease if the hospitals are used to commit acts hostile to the enemy. Nursing wounded or sick combatants is not considered a hostile act.^[401] The Convention goes on to lay down rules to ensure that persons engaged exclusively in the operation of civilian hospitals and medical transports – be they on land, sea or air – are respected and protected.^[402]

Mention should also be made of the fact that the First, Second and Fourth Geneva Conventions and Additional Protocol I provide that the distinctive emblem of the red cross or the red crescent^[403] shall be displayed by medical and religious personnel, on medical units and on medical transports. The distinctive emblem must be respected at all times and may not be used improperly.^[404]

Finally, the Convention requires all States to allow the free passage of consignments of medical and hospital stores intended for civilians in another State even though it may be their opponent in a conflict.^[405]

iv) Relief actions

The provisions of the Fourth Geneva Convention and Additional Protocol I relating to relief actions all include medical supplies among the relief consignments.^[406] Additional Protocol I requires that in the distribution of such consignments priority be given *inter alia* to children, expectant mothers, maternity cases and nursing mothers.^[407]

v) Prohibition on biological experiments

A final concern of international humanitarian law with regard to the issue of health is to ensure that the atrocities committed during the Second World War, when civilians were subjected to horrific medical experiments, are not repeated. Accordingly, both the Fourth Geneva Convention and Additional Protocol I contain extensive provisions prohibiting any medical procedure not justified by the health of the person concerned.^[408]

Non-international armed conflicts

With regard to the issue of health, the express treaty provisions applicable in non-international armed conflicts are fewer in number. Nonetheless, they lay down the same

fundamental obligations and protections. Common Article 3(2) of the Geneva Conventions provides that “the wounded and sick shall be collected and cared for”.

Additional Protocol II provides that the wounded and sick must be respected, protected and treated humanely and must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. The Protocol repeats the fundamental principle that no distinction should be drawn between those needing medical attention except on the basis of their condition;^[409] and contains similar provisions to those applicable in international conflict relating to the general protection of medical duties and medical units and transports.^[410] The Protocol also reiterates the prohibition on medical procedures not indicated by the state of health of the person concerned.^[411]

The Protocol also provides that if the civilian population is suffering undue hardship owing to a lack of supplies essential for its survival – and this expressly includes medical supplies – relief actions shall be carried out.^[412]

Finally, Additional Protocol II contains provisions similar to those of the Geneva Conventions and Additional Protocol I relating to the use and protection of the distinctive emblem.^[413]

Individual criminal responsibility

Intentionally directing attacks against hospitals and places where the wounded and sick are collected, provided they are not military objectives, and against buildings, material, medical units and transport and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law are war crimes under the Statute of the International Criminal Court when committed in both international and non-international armed conflicts.^[414]

Biological experiments, wilfully causing great suffering or serious injury to body or health are grave breaches of the Geneva Conventions.^[415] Subjecting persons to physical mutilation or to medical or scientific experiments of any kind that are not justified by the medical treatment of the persons concerned nor carried out in their interest, and causing death or seriously endangering health are also war crimes under the Statute of the International Criminal Court when committed in international or non-international armed conflicts.^[416]

2) Human rights law

The right to health is enshrined in a number of human rights instruments. The International Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and requires States to take steps towards the progressive realization of this right, in particular with respect to the reduction of the stillbirth rate and of infant mortality, the prevention, treatment and control of epidemic, endemic, occupational and other diseases, and the creation of conditions which would assure to all medical service and attention in the event of sickness.^[417] The right to health is also expressly

laid down in the African Charter on Human and Peoples' Rights and the Convention on the Rights of the Child.^[418]

These rights are not immediately enforceable, but insofar as they have been developed, they must be granted to everyone without any distinction *inter alia* on the basis of sex. Furthermore, the standards of health and health care that must be attained are relative and not absolute.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC aims to make sure that victims of armed conflict have access to the best appropriate level of health care. The ultimate objective is to contribute to a reduction in suffering, mortality, morbidity, and disabilities caused by increased needs or insufficient health-care provision.

The ICRC runs projects and programmes related to primary health care, based on a system of health posts, health centres and district hospitals, public health programmes, health education, immunization and campaigns against certain diseases. Assistance is given to the existing health system to try to ensure that normal health services are maintained; it may take the form of reconstruction or rehabilitation of medical structures, management support, provision of training, medicines and medical equipment, or the presence of an ICRC medical team.^[419] Reproductive health care, especially mother and child care, is an integral part of ICRC primary health-care strategies.

In some contexts the ICRC assists general hospitals with maternity wards and/or maternity hospitals, for example in East Timor, Sierra Leone, and the Republic of the Congo. In certain situations the ICRC pays the costs of medical treatment for those wounded in armed conflict and who have no medical insurance.

Treatment – through the provision of antibiotics to hospitals and health centres – for sexually transmitted diseases is currently the most frequently practised reproductive health-care activity, followed by antenatal care. Several ICRC delegations, in particular in Africa, have initiated projects with a view to increasing awareness of the population and health structure staff in the field of reproductive health. For example in the Republic of the Congo, the specific needs of women in relation to pregnancy and childbirth were taken into consideration in the ICRC's activities. Vaccinations for children under five years and women of childbearing age (for tetanus) were carried out in camps for the displaced. The ICRC initiated a system of antenatal services in cooperation with a local NGO in camps for the displaced assisted by the ICRC. The ICRC provided basic medical supplies to the NGO, which ensured that displaced women were not asked to pay the fee for antenatal consultation and medicines at the clinic. It also negotiated arrangements whereby the military hospital would deliver the babies of displaced women free of charge and birth certificates would be issued at a reduced price.^[420]

In the Mexican state of Chiapas, following a survey on the needs of women affected by hostilities, the orientation of the assistance provided was changed to focus on

reducing maternal and child mortality. It was found that traditional birth attendants lacked training and the women themselves lacked education, so the ICRC immediately started a training and education programme for existing and new traditional birth attendants in displaced persons' camps in Chiapas.^[421] Included in the programme was a training component to strengthen the women's confidence and encourage them to visit the health structures when necessary.

In regard to HIV/AIDS, the ICRC has started a pilot project in Burundi and is looking into the possibility of setting up projects in other countries. Treatment with anti-retroviral medication is not yet carried out.^[422]

In Ethiopia, the ICRC trained a number of illiterate nomad women, who were chosen by their communities, to recognize some frequent diseases and health problems such as malaria, eye infections, anaemia, diarrhoea and hygiene problems and their consequences. These women were taught how to prevent or treat these specific conditions and how to keep basic statistics to allow evaluation of their activities.

d) KEY POINTS

1. All efforts must be made to preserve the proper functioning of health services during armed conflict situations.
2. The major role played by women in maintaining their own health and welfare, as well as that of their family and community members, must be supported and utilized to its full potential to increase the health and well-being of women, their families and communities. Primary health care for women and girls is a prerequisite to improving the health of the whole family and community.
3. Health education and community participation in planning and allocating health resources, taking particular account of the central role of women within the culture, should feature strongly in primary health-care programmes for the civilian population.
4. Preventive action and assistance programmes for HIV/AIDS patients must consider the specific constraints making it difficult for women to have access to programmes of emergency medical care and longer-term health care.
5. In emergency situations, a basic reproductive health service should be provided which includes information on the prevention and management of the consequences of sexual violence, the reduction of HIV transmission, and the prevention of excessive neonatal and maternal morbidity and mortality. Even though in some situations the priorities may not be reproductive health care but very basic medical assistance to ensure survival, the need for reproductive health care must be promoted on a broad basis in order to ensure its inclusion in all needs assessments.
6. In more stable situations or periods of reconstruction, more comprehensive reproductive health care should be available, including ante- and post-natal care, services in the field of sexual violence, tests and treatment for sexually transmitted infections, and provision of safe blood transfusion.

7. In the field of obstetric care, women should be able to have access to trained health staff, including gynaecologists and midwives, when giving birth, especially in isolated areas (for example through referrals by traditional birth attendants to health centres, transfers to hospitals, etc.) in order to reduce the high rate of maternity-related deaths.
8. Humanitarian organizations should try to evaluate the maternal mortality rates of populations affected by armed conflict to assess whether assistance is required.
9. Humanitarian organizations should have a sufficient number of health personnel aware of both women's specific health needs and cultural/religious issues, since very intimate and culturally sensitive interviews with women are often required. This is especially true for problems of sexual violence.
10. Health personnel should also be familiar with the national laws and national health policies.

2. **Health care for victims of violence**

a) OVERVIEW OF PROBLEM

Persons wounded directly during fighting – by bullets, shrapnel, or anti-personnel landmines – need immediate and effective pre-hospital care, appropriate emergency surgery and physical rehabilitation. Injuries from mines and amputations lead to psychological trauma as well as life-long disability. The rehabilitation of those who have been severely wounded in wars is crucial to enable them to resume life in their homes and communities. This includes access to appropriate prosthetic, rehabilitation and/or psycho-social assistance to cope with their disability and trauma. Access to health care, medicines and rehabilitation programmes needs to be affordable, safe and feasible (located at a reasonable distance).

Women and girls are often victims of landmines and need access to rehabilitation and prosthetic assistance programmes.^[423] They may suffer different, more severe social or cultural repercussions than men as a result of their injuries. Women may often be considered unmarriageable because of their disability or, if married, may be deserted by their husbands. They may not receive prosthetic and rehabilitation assistance for many reasons: because they are not as visible outside the home as their male counterparts; because their families do not see the need to seek prosthetic assistance for women (who will remain in the home); because only men work in the facilities providing such care and, for cultural or religious reasons, women cannot go where men who are not members of their family are present; because child-care responsibilities preclude their seeking assistance; because they cannot afford the transport, accommodation and treatment costs involved in being fitted with a prosthesis and the care it

necessitates; and/or because men, as military casualties, receive such care and assistance through military hospitals and organizations that target war casualties, whereas women's access to such services is restricted.

b) REVIEW OF INTERNATIONAL LAW

See section on *Health* above.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC aims to provide rapid health-care assistance to meet the urgent needs directly arising from an armed conflict. This assistance is given where possible to the existing health system to try to ensure that normal health services are maintained, and may take the form of the reconstruction or rehabilitation of medical structures, management support, training, medicines, medical equipment, or the presence of an ICRC medical or surgical team.^[424]

1) Assistance for surgery and hospitals

The ICRC helps develop strategies and policies to enhance the capacity of hospitals in war-affected countries to provide surgical treatment for the war-wounded. The ICRC assists in the refurbishment of medical facilities, supplies equipment, medicines, consumable items and fuel for generators, and provides support for hospital administration and management. In some cases, the ICRC may have to provide expatriate hospital personnel to carry out the work normally performed by local staff who are no longer available. ICRC surgeons are sent in many contexts to assist with war surgery and training. Moreover, the ICRC often provides training for local nurses, doctors and other hospital staff in surgery, anaesthesia, nursing care, physiotherapy and hospital management. Surgery seminars for both military and civilian surgeons are also held. Additionally, the ICRC develops programmes, often in partnership with National Red Cross and Red Crescent Societies, for pre-hospital care and evacuation (sometimes by air) of the war-wounded and surgical emergency cases to hospitals.^[425] Such programmes with National Societies may also be aimed at building their capacity to organize ambulance services and train staff, or involve coverage of the costs of evacuating the war-wounded.

Women sometimes encounter particular problems in having access to health and medical care (distance to hospitals, need for a male family member to accompany them, cost, lack of freedom of movement, waiting lists at hospitals). For example, in Afghanistan the ICRC has made special representations to the authorities regarding access to medical care, and today women have access to hospitals assisted by the ICRC.

Statistics and information about victims of landmines are difficult to obtain. Not all victims are able to reach a medical facility so the total number of casualties is unknown. The ICRC has statistics on mine victims admitted to the ICRC-run or ICRC-assisted hospitals. Statistics broken down according to sex are collected in the ICRC-managed hospitals.

2) Physical rehabilitation

One of the guiding principles of the ICRC's physical rehabilitation programmes is to try to ensure their sustainability. This is because an amputee has a permanent disability and will need access to rehabilitation services for the rest of his/her life. Thousands of amputees are thus dependent on the continuation of these rehabilitation services in order to have their prostheses repaired or replaced.^[426]

Since 1979, the ICRC has supported or set up 56 physical rehabilitation centres in 25 war-torn countries worldwide, and has fitted over 160,000 prostheses for approximately 105,000 people. The data collected are not broken down according to sex in all projects. However, in most of the ICRC projects, 15% of the patients who receive orthopaedic appliances are women.

At present, the ICRC is running or assisting 37 physical rehabilitation projects in 14 countries.

3) Counselling

As an illustration of what the ICRC can do in the field of counselling, it is currently supporting an Algerian Red Crescent Society programme for women and girls who are victims of the violence in the country. This includes the setting-up of rehabilitation centres and assisting groups and programmes for the social reintegration of these women and girls. (See section on *Security*.)

d) KEY POINTS

1. In countries where it is required that men and women be treated by medical personnel of the same sex, or where traditional methods are adhered to, a sufficient number of trained female personnel must be employed to meet these requirements.
2. In countries where the mobility of women is restricted on religious or cultural grounds, the health and assistance needs specific to women have to be assessed taking those restrictions into account, and working practices adapted to ensure appropriate access to health care for women.
3. In programmes for prosthetic rehabilitation, there must be a better understanding of the impact of loss of a limb on women and girls, which may be very different from the impact on men and boys. Rehabilitation programmes should also include reintegration into the community, which is especially vital for women and girls who may be ostracized because of their disability.

4. A breakdown of statistics of mine-injured people should be made available to ensure that all of them are targeted for assistance, and to identify high-risk groups for targeting in preventive and awareness campaigns.
5. In situations of armed conflict, when surgical needs and supplies for the war-wounded are being assessed, general emergency surgical cases, obstetrics and gynaecology should all be considered.
6. In physical rehabilitation programmes it should be considered whether women have full access to and the possibility to benefit from these programmes, taking into consideration the social and cultural constraints which may limit their inclusion. Analysis of statistics of participants in programmes disaggregated by sex and age would facilitate this process.

G. Hygiene and sanitation

By “hygiene and sanitation” are meant the conditions, or practices carried out, for maintaining health and preventing disease in individuals and in the public in general.

a) OVERVIEW OF PROBLEM

Women need access to water and soap for personal hygiene, and to be able to wash clothes and living quarters. Women are particularly vulnerable to the consequences of any disruption of traditional patterns of living. For example, many cultures dictate that women bathe, wash and use latrine facilities in private, away from men and boys. If privacy and security in suitable sanitary facilities are not available, women may refrain from carrying out these activities to the detriment of their hygiene and physical health.^[427]

In situations of armed conflict, economic deprivation and extreme living conditions increase the risk of the spread of illnesses and diseases, such as typhoid, dysentery, cholera, hepatitis, etc. All members of the family – but especially women, who are primarily responsible for educating family members in matters of health – need to be able to receive instruction on how to improve hygiene and sanitary practices, especially in the difficult situations caused by war.

An adequate supply of culturally acceptable sanitary products and clothing is vital to the dignity and health of women. Sanitary protection may often become unobtainable in situations of armed conflict when living patterns are disrupted. “Strong social taboos associated with menstruation (...) made it difficult for the girls to wash their menstrual cloths or change them frequently enough. Many of them became separated

from their social network of relations, which caused them a great deal of anxiety and stress. Their difficulty in trying to follow social norms has had far-reaching implications on their health, identity, family and community relations.”^[428]

Women are often not included in the planning and implementation stages of water and sanitation projects, yet their contribution as the main users of water in the household and as collectors of water is often invaluable. Furthermore, “experience with women in maintenance roles indicates that while some costs may be higher (due to their need for more training and their restricted mobility which reduces the number of pumps they maintain) their effectiveness in regular and preventive maintenance is better than men’s, and costs of repair campaigns are lower”.^[429]

“Full benefits only accrue from water supply and sanitation improvements when (...) women have more influential roles in, for example, management committees, financial arrangements, and maintenance of installed facilities.”^[430] If women are not included, then inappropriate systems may be installed which women cannot fully benefit from or utilize, e.g. water containers too heavy for women to lift to transport water, water pump installations not adapted to women’s needs, etc.

b) REVIEW OF INTERNATIONAL LAW

See the sections on *Water* and *Health*.

c) THE ICRC’S OPERATIONAL RESPONSE

The ICRC attempts to improve the hygiene and sanitation situation of people affected by armed conflict. Activities include ensuring that there is access to enough water, distribution of washing material such as soap or disinfectant, construction of latrines, rehabilitation of sewage treatment systems, and programmes for the collection and treatment of waste. Water and sanitation programmes provide a chance for community involvement and education.^[431]

In Afghanistan and the Russian Federation (Northern Caucasus) the ICRC carried out awareness-raising programmes for mothers on questions of hygiene, water purification and epidemics.

In East Timor, the rural water supply programme is targeting about 20 poor communities in various districts of the country by recommissioning or building small gravity-flow water supply schemes. The distribution systems, which include public taps and shower facilities, have been designed specifically for the women who traditionally fetch water supplies for their households. They are designed in such a way that women have privacy for washing and personal hygiene purposes. A powerful hygiene education campaign is included in the construction phase to improve household hygiene practices and awareness. A number of special education sessions for women’s groups in the

respective project areas are organized with local health workers and community hygiene educators. The programme benefits approximately 15,000 poor, isolated households.

A similar programme to protect springs and rehabilitate small-water schemes is being developed in Angola. Special washing facilities are being constructed at the distribution points to ease the women's domestic tasks (washing of clothes, bathing of children, cleaning of utensils, and personal and corporal hygiene). Shower rooms are being added to the washing area for the sake of women and girls, who are the main users of the spring. The programme benefits some 40,000 households in districts around Huambo and Kuito. The recommissioning of the piped water system in Huambo city will benefit about 300,000 more people, of whom 60% are women. The project will encourage households to maintain all renovated distribution facilities (taps, private bathrooms).

d) KEY POINTS

1. Women need safe access to washing and toilet facilities that afford adequate privacy and dignity, and respect cultural dictates, and they need to be supplied with soap for washing and cleaning. Sanitation facilities constructed, for example, in camps for displaced persons or refugees, should be located in well-lit areas allowing secure access to women and girls.
2. It is especially important that appropriate sanitary products and clothing be distributed in camps for displaced persons, who may lack access to items.
3. Women need to take part in decisions about the location of water and sanitation facilities, and also in those concerning the technical aspects of maintaining such facilities. Women are frequently the primary collectors and users of household water and are thus actively concerned with its proper running and maintenance.

H.

Maintenance of the family unit

The maintenance of the family unit is of primary importance to the well-being of all persons. It is especially important for children to remain together with their parents, notably for reasons of care, affection, education, protection, assistance and cultural awareness. The well-being of children has a direct impact on that of their mothers.

The composition of the family unit takes different forms according to cultural, religious and/or traditional factors. For example, it could include extended family members.^[432]

“In the narrow sense, the family covers persons related by blood and living together as one household. In a wider sense it covers all persons with the same ancestry (...). In short, all those who consider themselves and are considered by each other to be part of a family, and who wish to live together, are deemed to belong to that family.”^[433]

1. **Restoring and maintaining family links between persons separated by conflict**

a) OVERVIEW OF PROBLEM

Family members separated from one another in situations of armed conflict need to be able to send family news. Some families may choose to be separated because they feel it is less of a risk than staying together; for example, some families choose to send adolescent daughters away from home in a conflict area to relatives or friends elsewhere as a means of protecting them from sexual violence or abduction by armed forces. Frequently in situations of armed conflict, the normal means of communication break down or are deliberately cut off. It is important that news of a strictly family nature is able to be exchanged in order to maintain family links.

b) REVIEW OF INTERNATIONAL LAW

For the sake of avoiding repetition, the legal part of the three subsections *Restoring and maintaining family links between persons separated by conflict*, *Searching for family members* and *Family reunification* will be dealt with in the present subsection.

1) **International humanitarian law**

International humanitarian law seeks to maintain and restore family unity in a number of ways. First, by preventing the separation of family members against their will; secondly, in situations where families are separated (e.g. because of internment, displacement or the participation of certain family members) it requires the adoption of measures that will facilitate reunification. These are mainly a matter of ensuring that a person's identity is registered. Particular attention in this regard is given to children. Finally, if separation has occurred, international humanitarian law lays down measures aimed at facilitating the re-establishment of family ties and the reunification of dispersed families.

International armed conflicts

i) Measures aimed at preserving family unity

As long ago as 1907, the Hague Regulations required family rights to be respected.^[434] The Fourth Geneva Convention provides that “protected persons are entitled, in all circumstances, to respect for (...) their family rights” in the context of occupation.^[435] This obligation to respect family rights implies not only that family ties should be maintained, but also that they should be restored if they have been broken as a result of wartime events. The right is not absolute however. Parties to a conflict are entitled to take whatever control or security measures that may be necessary as a result of the war. One such measure could be the internment of one of the members of a family.^[436]

The Fourth Convention contains numerous provisions which expressly aim to ensure that families do not become separated in situations where they are likely to do so. For example, in situations of occupation, if the Occupying Power carries out evacuations, it must ensure, to the greatest practicable extent, that members of the same family are not separated from one another.^[437] Similarly, when civilians are interned during occupation, members of the same family, and in particular parents and children, must be lodged together in the same place of internment, and internees may request that their children who are left at liberty without parental care be interned with them.^[438] Finally, to ensure that family links are not severed in situations where only certain members of a family have been interned and they are transferred from one place of internment to another, internees must be officially advised of their departure and of their new address in time for them to inform their next of kin.^[439]

The right to family life is also recognized and protected in numerous other ways, for example by the provisions allowing family members to visit detained or interned relatives and those that require the forwarding of correspondence when the place of detention has been changed.^[440]

ii) Measures to preserve identity

Recognizing that, despite these measures, substantial risks of families becoming separated in situations of conflict exist, international humanitarian law lays down rules requiring belligerents to take measures for registering the identity of persons in their control. The focus of these measures is on children, as they are the ones most likely to lose contact and the most vulnerable once this happens. Identification measures taken in respect of combatants are also relevant because of the importance of communicating their fate to their families.

With regard to children, the Fourth Geneva Convention provides that parties to a conflict must “endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means”.^[441] In situations of occupation the Convention requires the Occupying Power to take all necessary steps to facilitate the identification of children and the registration of their parentage. It also prohibits the Occupying Power from changing the personal status of children.^[442] If children are evacuated from the State of which they are nationals, Additional Protocol I

requires the evacuating State to prepare a card for each child, setting out as much identification information as possible, together with photos, and to forward the card to the ICRC's Central Tracing Agency in order to facilitate the return of the children to their families at the end of the conflict.^[443]

International humanitarian law also requires that identification information be taken and registered for various other categories of persons, including interned and detained civilians, journalists, prisoners of war and, of course, combatants.^[444]

iii) Correspondence and transmission of information

In order for families to be informed of the fate of their relatives, the Fourth Convention requires that “all persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them”.^[445] The right to correspond with family members is also expressly granted to prisoners of war and to detained or interned civilians.^[446]

The Third and Fourth Conventions require parties to a conflict to establish upon the outbreak of hostilities a National Information Bureau which is responsible for receiving and transmitting information in respect of the prisoners of war or protected persons in the party's power.^[447] Such information includes each person's full identity and regularly updated details of the place of detention and any transfer, release, admittance to hospital or death. In practice, the ICRC's Central Tracing Agency collects and transmits the information provided by the National Information Bureaux.^[448]

iv) Restoration of family links

The Fourth Convention requires parties to a conflict to facilitate enquiries by members of families dispersed during a conflict, with the objective of renewing contact with one another and to encourage the work of organizations engaged in this task.^[449]

v) Measures to search for missing persons and to ascertain identity

The Fourth Convention requires parties to a conflict to facilitate the steps taken to search for the killed and wounded.^[450] As regards combatants, the First Convention provides that “at all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick (...) and to search for the dead”.^[451] States are also required to “... record as soon as possible, in respect of each wounded, sick or dead person of the adverse Party (...) any particulars which may assist in his identification” and to forward this information to the National Information Bureau.^[452] Parties to a conflict are also required to prepare and forward to each other through the Bureau death certificates or duly authenticated lists of the dead, together with wills or other documents of importance to the next of kin.^[453] Finally, prior to burial or cremation of the dead, parties are required to carry out a careful examination with a view to establishing identity.^[454]

The rationale underlying these rules is not only to ensure medical treatment for the wounded and sick but also to minimize the number of missing persons. This is recognized by Additional Protocol I, which provides that the activities in regard to the missing and the dead “shall be prompted mainly by the right of families to know the fate of their relatives”.^[455]

vi) Measures in regard to deceased persons

All four Geneva Conventions address the issue of deceased combatants or civilian internees/detainees, principally in order to make their identification possible. With regard to combatants, the First and Second Conventions contain detailed provisions on the collection, identification and burial of the dead. These include: the duty to search for and collect the dead; the duty to record and transmit to the other side particulars which may assist in the identification of each deceased person, as well as the date and cause of death; and the duty to exchange death certificates and lists of the dead.^[456]

With regard to burial, the First Convention provides that parties should ensure that burial or cremation of the dead is carried out individually as far as circumstances permit and is preceded by a careful examination with a view to confirming death and establishing identity. Bodies should not be cremated except for imperative reasons of hygiene or reasons of the deceased person’s religion. Parties are further required to ensure that the dead are honourably interred, that their graves are respected and properly maintained and marked so that they can always be found. At the outset of hostilities, parties are required to establish an Official Graves Registration Service which will allow subsequent exhumations and ensure the identification of bodies and the possible transportation to the home country. As soon as circumstances permit, and at the latest at the end of hostilities, the belligerents’ Graves Services must exchange lists indicating the exact location and markings of the graves, together with particulars of the dead interred therein.^[457] Similar provisions are contained in the Third Geneva Convention relating to the burial of prisoners of war who die in captivity, and in the Fourth Convention relating to civilian internees who die while interned.^[458]

Additional Protocol I extends the application of the rules to persons who are not nationals of the country in which they have died as a result of the hostilities and by laying down further rules regulating access to the burial sites. As soon as circumstances permit, parties to a conflict and other States in whose territory graves and other burial locations are situated are required to conclude agreements to facilitate access to the grave sites by relatives of the deceased. They are also required to facilitate the return of the remains of the deceased to the home country at the request of the country or of the next of kin.^[459]

Non-international armed conflicts

Although neither common Article 3 nor Additional Protocol II expressly refers to a right to family life, a prohibition against arbitrary separation can be based on the requirement of humane treatment included in these provisions.

Specific issues relating to the question of family unity are addressed by Additional Protocol II. With regard to children, the Protocol requires parties to a conflict to take all appropriate steps to reunite families that have been separated.^[460] With regard to persons whose liberty has been restricted for reasons related to the conflict, the Protocol envisages the possibility of families being accommodated together and lays down the right to send and receive correspondence.^[461] The Protocol also contains provisions concerning searches for the wounded and sick but, unlike Additional Protocol I, does not expressly refer to identification and to the transmission of information to the other side.^[462]

Additional Protocol II requires all possible measures to be taken to search for the dead and to dispose of them decently.^[463] The Protocol does not regulate the question of the marking of or access to burial sites, or that of returning the remains of the deceased to their families.

2) Human rights law

The right to respect for family life is recognized by a number of universal and regional human rights instruments. For example, the International Covenant on Civil and Political Rights provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”.^[464] Similar provisions are included in the African, American and European Conventions on Human Rights.^[465] The European Court of Human Rights has interpreted the right to respect for family life as including protection against expulsion in situations where such a measure would sever all family links.^[466]

The Convention on the Rights of the Child provides that children have the right to an identity and family relations, prohibits their arbitrary separation and lays down provisions concerning the maintenance of contact with parents and measures to promote family reunification.^[467]

Finally, the Genocide Convention includes the forcible transfer of children from one national, ethnic, racial or religious group to another, if accompanied by the intent to destroy the first group in whole or in part, in the list of acts which may amount to genocide.^[468]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC assists families in restoring and maintaining family contact through Red Cross messages – a standard form which allows the sender and recipient to write news of a family nature.^[469] Red Cross messages are collected and distributed by the ICRC and/or through the worldwide network of National Red Cross and Red Crescent Societies within countries at war and, when normal means of communication have been disrupted, in third countries. The ICRC also makes increasingly frequent use of other forms of communication – satellite phones, Internet services, radio broadcasts – to complement or replace Red Cross messages in enabling families to contact relatives.

Such services continue until normal means of communication have been restored. Tracing services are open to all family members separated by conflict.

In 2000, the ICRC collected a total of 510,635 and distributed a total of 478,969 Red Cross messages.

d) KEY POINTS

1. During conflicts, means of communication enabling separated family members to contact one another should be not only allowed but facilitated as much as possible.
2. Armed forces and groups should have a communication system between their members and their families that functions at all times.

2. Searching for family members

a) OVERVIEW OF PROBLEM

“There used to be a saying around here that the worst thing which can happen to someone is to bury their own child. It seems nowadays that there is something far worse – not knowing what happened to him at all.”^[470]

In times of armed conflict, families are often separated when they flee or when relatives (generally male relatives) are conscripted, are detained, or disappear. Family separation is also used as a means of warfare; for example, civilian men and boys are separated from their female relatives and disappear. Family members separated by armed conflict need to be able to search for information on the fate of relatives with whom they have lost contact – whether they be missing, detained, sick or wounded soldiers, or civilians caught up in the conflict. This search may be carried out privately or through a humanitarian organization, such as the ICRC and/or the National Red Cross or Red Crescent Society.

Armed conflict often results in women becoming heads of the household, holding the remaining family members together, trying to maintain contact with absent relatives, visiting family members held in detention or searching for information on their fate. The loss of the male head of household can lead to a disintegration of traditional social systems and have a dramatic impact on the remaining family unit. Furthermore, families of the missing frequently lack official recognition of their situation, or even a clear legal status, which adds to their extreme suffering by causing difficulties in obtaining social assistance and compensation.

Women are often the main initiators of requests for news of the fate of family members. This is primarily because more men than women are killed or disappear in

connection with an armed conflict, which means that it is more often than not the male relative who is being looked for. But it is also possible that women are perceived as being less at risk when approaching organizations and authorities for information. Women are also often looking for children from whom they were separated when the child was fleeing into displacement, detained, or recruited into the armed forces or armed groups, etc. The searching process usually results in people being found and contact being restored. However, in many situations the fate of a number of people is not determined and these people are considered as missing. Often the search for news on the fate of the missing, whether military or civilian, can go on for years. This can be due to a lack of official procedures for searching for the missing, carrying out exhumations and identifying the dead, or to a lack of willingness by the parties to the conflict to solve the issue of the missing. Often soldiers, especially in opposition groups in non-international armed conflicts where large numbers of people, recruited quickly without following specific procedures, go off to fight without proper means of identification (identification tags) and without adequate records of their identities, their blood groups, dental information, etc. being kept by the armed forces. This makes identification in case of death very difficult. Where the issue of the “missing” has become a political tool used by the former parties to the conflict or where there is a lack of willingness to deal with the problem, the family’s need for information concerning the fate of relatives becomes a secondary issue (and manipulated for political ends) or forgotten.

“And when the children ask [where is their father], how do you answer a question you don’t know yourself? I still don’t tell them anything special although I am conscious of the time when they will start asking questions....”^[471]

Women may face many constraints when searching for information on the fate of their missing relatives, owing to security, financial, cultural, traditional and social barriers to women in obtaining access to information, authorities, military groups and political representatives. Many women have found that individually they do not have the means, skills or courage to address authorities and have therefore formed groups to search for news of the missing, to pressurize authorities and to ensure that their relatives are not forgotten. For example, various associations have been formed throughout the republics of the former Yugoslavia for the families of the missing. There are also organizations in Sri Lanka set up by women to determine the fate of the “disappeared” and to lobby the armed forces for proper identification of soldiers going into action (name tags, blood group, dental records, etc.). Such activities take courage, determination and tenacity as well as organizational, lobbying, fundraising and campaigning skills. “It’s better to know than not know and just live in hope when that person is dead and that’s an area that I have been fighting for. Until this war ends and till there is a solution – I don’t think that I can give up.”^[472]

It is important that the relatives of persons killed in armed conflicts learn of the cause and circumstances of the death of their loved ones, that they know where the bodies are, and, where necessary, that they can organize a proper burial in keeping with

traditional cultural or religious practices. Being able to receive the body of a dead relative for burial according to customary dictates and rites, and being able to revisit the place of burial are important to the mourning process and the ability to cope with the loss.

In many armed conflicts, bodies of dead combatants and civilians are often not returned to the family. This may be because the body cannot be found or identified (and resources are not employed to achieve this end) or because the bodies have been kept by the opposing party as a bargaining tool to use against the adversary or as a means of continuing to torment the family. When the body has been returned and buried, the family needs to be able to mourn and visit the burial site free from persecution and harassment. The importance of this issue cannot be overstated – in coping with the death of a loved one it is vitally important to be able to carry out the rituals for the dead and express grief. Not being able to ascertain the fate and if possible recover the body leads to uncertainty and hope that the person is alive, and thus an inability to carry out normal rituals for the deceased. Suppressing grief can lead to an inability to deal with other traumas of armed conflict, to lack of healing and to prolongation of the conflict and of hostilities and divisions within communities; it can even lead to an unwillingness for reconciliation between different sides.

b) REVIEW OF INTERNATIONAL LAW

See section on *Restoring and maintaining family links between persons separated by conflict*.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC, as an intermediary between families and the relevant authorities, tries to clarify the fate of persons unaccounted for in relation to armed conflict and internal disturbances. As soon as a conflict starts, the ICRC makes approaches to the conflicting parties in order to ensure that all steps are taken to prevent disappearances and that there is further clarification of the fate of missing persons.

The ICRC endeavours to determine the fate of the missing through the Red Cross/Red Crescent tracing services network, visits to places of detention, enquiries in response to tracing requests and representations to the warring parties, as well as through active tracing, for example by checking hospital and morgue records or making enquiries in towns and villages. The ICRC frequently approaches parties to an armed conflict with lists of persons unaccounted for, whose fate the authorities may be able to clarify. The ICRC has assisted in special commissions, sometimes set up under ICRC auspices, through which parties to an armed conflict carry out the necessary searches for information on persons sought. Such a role has been assigned to the ICRC in official peace agreements such as the Dayton Agreement of 1995.

As soon as the parties to the conflict accept the deployment of the ICRC's tracing activities, the ICRC takes the following steps: (1) it sets up with each party a system providing for the restoration and maintenance of contact between persons who have lost contact with their families; (2) it gathers tracing requests from families related to the persons unaccounted for; (3) it carries out active searches; (4) it submits the tracing requests to the authorities designated by the parties, with the agreement of the families concerned; (5) it discloses the information supplied by the parties solely to the families; (6) it guarantees that the information received will remain confidential and will not be used by any organization other than the ICRC.

The ICRC also acts as a neutral intermediary, with the agreement of the parties, in facilitating the return of the bodies of persons killed to their families for burial.

The ICRC has found that frequently the majority of those missing in relation to armed conflict are men. For example, eight out of the 608 persons officially unaccounted for in Kuwait since the Gulf War are women. In Bosnia-Herzegovina, there are still 18,292 persons reported as missing by their families to the ICRC. Of these, 92% are men and 8% are women. The very fact that many women survive conflicts in which their menfolk have died or disappear without trace has enormous implications. For example, the wars in the former Yugoslavia and the genocide in Rwanda have highlighted the plight of widows and women desperately trying to ascertain the fate of their loved ones and having to cope as head of household.

The ICRC has been particularly active in the republics of the former Yugoslavia, especially in Bosnia-Herzegovina. The ICRC has made representations to the former parties to the conflict to determine the fate of missing persons. It has done so by various means such as by submitting lists of missing persons or by exchanging information with families of the missing and associations. In 2000, the ICRC also published and made available to the families of missing persons in Bosnia-Herzegovina a "book of belongings", which was made up of photos of clothing and personal effects found on dead bodies that had been recovered. Several families have already recognized items belonging to missing persons, allowing formal identification to begin. The ICRC is also trying to help the families of the missing to gain access to material assistance (compensation, pensions, and other facilities) by appealing for appropriate legislation, providing certificates and facilitating the families' access to appropriate services (psycho-social, administrative and material support). The ICRC produced a *vade mecum* for the families of the missing regarding the legislation and administrative procedures that concern them. It also issues certificates to families of missing persons stating that a tracing request has been lodged with the ICRC. In Bosnia-Herzegovina, families of the missing were asked what their greatest need was during and after the conflict. They replied that it was for someone to listen to them, answer their questions and dispel rumours, and also for a place to meet with others in a similar situation.

In Kosovo in 1999-2000, the ICRC set up family link centres, with mobile components, to restore links between persons separated by war. These units travel throughout Kosovo with telephones, lists of names, Red Cross messages, etc., with the aim of

re-establishing family contact through direct phone calls, consultations on the ICRC Internet family-news site and exchange of Red Cross messages. The primary objectives of these centres and mobile teams are: to enable every single person to use Red Cross/Red Crescent services to contact his/her relative or file a request with the ICRC; to prepare files and lists of persons who have been arrested or executed or who have disappeared, and submit them to the authorities; to give legal and administrative advice to families (each centre is staffed with a lawyer); and to offer psychological support to families by offering them a place to come and someone to listen to them, and by referring them, if need be, to other organizations for further support. In February 2001, the Organization for Security and Co-operation in Europe (OSCE) published a “book of belongings” for Kosovo containing 750 photos of clothing and personal effects found on some 200 bodies recovered during the year 2000. The ICRC is in charge of making the book available to the families of the missing in Kosovo and also in Serbia and Montenegro. According to ICRC data, 3,587 persons from Kosovo of all ethnic origins remained unaccounted for in January 2001.

In Sri Lanka, the ICRC forwards the names of combatants missing in connection with the armed conflict to the parties to the conflict in an attempt to clarify their fate. The ICRC is also developing closer links with the families of the missing (especially through local families’ associations).

In addition, whenever possible, the ICRC in Sri Lanka has acted as a neutral intermediary to facilitate the handover of the bodies of soldiers killed in the fighting. The ICRC has approached the parties to ensure that, when bodies are not handed over, they are identified and/or photographed prior to burial or cremation so that the families can be informed. The ICRC has actively promoted the wearing of identification tags by soldiers. It has also urged that dead soldiers not be cremated but be identified and buried, and that their grave sites be marked, so that one day the families can reclaim their dead.

d) KEY POINTS

1. Armed and security forces need to ensure that all conscripts have a non-perishable form of identification. This should be worn at all times so that the wounded and sick and those killed in action can be easily identified. This is a prerequisite for being able to notify the authorities and families of those captured or killed.
2. Parties to an armed conflict should receive instruction on the importance of collecting and preserving the means of identifying captured, wounded and dead combatants, e.g. blood group and dental records, etc., so that relatives can be informed of their fate. Deceased combatants should not be buried or cremated without proper identification and/or photography of the body.
3. Training in international humanitarian law for arms bearers needs to stress the importance of determining the fate of persons killed or missing, and the obligations that parties to an armed conflict have in this regard.

4. Pressure needs to be put on parties to armed conflicts to determine the fate of missing persons and to give the bodies back to their families, in order that they can be buried and mourned.
5. Families need to be aided in their search for information on their missing relatives. More must be done, both during and after armed conflict, to speak more forcibly on behalf of the families of the missing. In particular, representations must be made to parties to the armed conflict and decision-makers must be contacted with a view to including policies on exhumations and compensation in peace negotiations and accords.

3. **Family reunification**

a) OVERVIEW OF PROBLEM

Family members separated by armed conflict need to be reunited as soon as security conditions permit or at the end of hostilities. In some cases family members need to be reunited on a priority basis because of their precarious situation, e.g. unaccompanied children, mothers separated from their babies, elderly persons living alone and persons whose security is particularly threatened. Children are especially vulnerable when they have been separated from their families and depend on themselves or the goodwill of neighbours or third persons for their support. This fact can cause even greater stress for mothers who have been separated from their children. In some contexts, it may also become a priority to reunite women with family members, especially if they have children to care for and have no reliable means of support.

b) REVIEW OF INTERNATIONAL LAW

See section on *Restoring and maintaining family links between persons separated by conflict*.

c) THE ICRC'S OPERATIONAL RESPONSE

In the field of family reunification, priority for family reunification is given to people requiring special protection, such as unaccompanied children, elderly people living alone, mothers with young children living in an area where they are an ethnic minority and in danger, released detainees and their next of kin.

The ICRC carries out activities to reunite families separated by armed conflict and may help them to obtain access to a safer area. The agreement of every person concerned must first be obtained, and the family relationship verified. Family reunification

often entails lengthy administrative procedures with parties to an armed conflict, as the ICRC must obtain the necessary authorizations (travel permits and visas) from the warring parties and the countries involved, including countries of transit. ICRC travel documents are issued when persons to be reunited do not have an identity card or passport.

In order to reunite children separated from their parents, the ICRC looks for and identifies all unaccompanied children, wherever they may be, records the identity of each child separated from its parents, photographs them (photographs are generally the only means of identifying and recording the identities of babies and small children), sets in motion mechanisms for tracing the parents, follows up the children until reunification is possible and organizes reunifications. To increase efficiency, the ICRC often cooperates with other major humanitarian organizations caring for children.^[473]

d) KEY POINTS

1. All appropriate measures should be taken to avoid the separation of families in situations of displacement.
2. Family members separated by armed conflict should be reunited as soon as security conditions permit or at the end of the hostilities. Authorities should facilitate this process.
3. In the field of family reunification, special attention has to be given to unaccompanied children, women separated from their babies and women in precarious situations, especially if they have children to care for.

I. Education and information

1. Education and training

a) OVERVIEW OF PROBLEM

Education is a prerequisite for making informed choices and being able to participate fully in society. The education of children is generally recognized as necessary by most societies. Adults, both male and female, also need education, including in areas such as international humanitarian law, human rights, health, and mine awareness.

In armed conflict situations, education is one of the first services to suffer disruption. This can happen for many reasons: teachers flee; schools are closed for lack of resources or because they are destroyed or requisitioned; parents cannot afford to send,

or will not risk sending, children to school; schools become inaccessible, etc. It is vital to children's development that they be able to receive an education. For many women, the education of their children is a primary concern. In interviews carried out with displaced women in camps in Sri Lanka, the women said their primary concern was education for their children, despite the difficult conditions with which they were faced daily in the camps. They felt that education was the future for their children and that life in displacement had a dramatic effect on their ability to provide their children with the means of education – uniforms, books, access to schools, etc. Having their children in school also releases women from childcare during the daytime, enabling them to carry out other tasks and earn an income, etc. [474]

In some instances, women have gained better access to education because of a conflict. Generally, however, educational opportunities for girls are restricted in many countries even in peacetime, and in periods of armed conflict a girl may lose the possibility of gaining a formal education more easily than a boy. Formal educational resources, when provided, generally focus on children, yet adults need the opportunity to receive an education or training in new skills. For example, displaced adults need to be able to deal better with the situation of displacement or future return. In displacement, men are often targeted for education programmes as heads of households. This practice ignores the needs of women heads of households and of women within the family, who may be the only providers in the absence of menfolk. Women need access to education and training opportunities in order to be able to benefit and profit from income-generating projects and sustainable development programmes. To be able to participate fully in such training, the constraints facing women, such as childcare, domestic tasks and household responsibilities, their lack of literacy skills and formal education, and cultural aspects such as the need for female trainers have to be taken fully into consideration in the planning and implementation of programmes.

It is widely believed that women make a valuable and necessary contribution to the establishment of peace because of their role as educators in the family and their experiences in coping with day-to-day problems in the family and local community, including food security, family well-being, control of household and rural resources, and the resolution of family conflicts. Training and education that aim at helping women to carry out this role more fully could have enormous benefits.

b) REVIEW OF INTERNATIONAL LAW

1) **International humanitarian law**

In the field of education, international humanitarian law focuses principally on children rather than on adults, although provision is made for education as a form of recreation for prisoners of war and civilian internees. [475] These measures will be dealt with in the chapter on detention.

International armed conflicts

International humanitarian law requires parties to a conflict to facilitate the education of children separated from their families. Emphasis is placed on entrusting the education, whenever possible, to persons of a cultural tradition similar to that of the children.^[476] In situations of occupation, the Occupying Power is required to facilitate the proper working of all national and local institutions devoted to the care and education of children.^[477]

Non-international armed conflicts

The provisions of Additional Protocol II on fundamental guarantees make particular reference to the needs of children, and lay down that “they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care”.^[478]

2) Human rights law

The right to education is recognized in the International Covenant on Economic, Social and Cultural Rights and in all the regional instruments.^[479] Although the purpose of many of these provisions appears to be to ensure children’s access to education, the right is clearly held by everyone without distinction *inter alia* on the basis of sex. The Convention on the Rights of the Child devotes a number of Articles to the question of education.^[480]

It is the Convention on the Elimination of All Forms of Discrimination Against Women which addresses adult education and training in greatest detail. Article 10 requires parties to take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education, and makes specific reference to access to information, including advice on family planning, to help to ensure the health and well-being of families.^[481]

3) Other bodies of law

The 1951 Refugee Convention provides that host States must grant refugees the same treatment that is accorded to nationals with respect to elementary education. With regard to further education, refugees must be accorded as favourable a treatment as possible, and in any event not less favourable than that accorded to aliens generally.^[482]

c) THE ICRC’S OPERATIONAL RESPONSE

Adult education: The ICRC provides and supports health education programmes for men and women, and educates the public on the dangers of mines and unexploded ordnance in countries affected by that bane. The ICRC also provides training in international humanitarian law to members of civil society, through instruction in academic

institutions, secondary schools, National Red Cross and Red Crescent Societies and other national organizations and institutions.

School rehabilitation and assistance: The ICRC provides assistance and financial support to rehabilitate and furnish schools, educational materials (books, pens, paper, blackboards) and food and clothing to facilitate and encourage children's attendance at school. School attendance is helpful and important to the children's parents.

Two illustrations of ICRC activities in the field of education should be mentioned here (see also the section on *Health*): In Equatorial Guinea, the ICRC has helped to finance a training and education programme for a school for the training of women – “girl-mothers” – who have broken away from their normal social setting; and in Ethiopia, not only did the ICRC train a number of illiterate nomadic Somali women refugees in basic health care and hygiene, as mentioned previously, but it included the teaching of basic reading and writing skills among the measures used to combat the frequent recurrence of diseases.^[483]

d) KEY POINTS

1. It is important that in armed conflict situations men and women receive education on health issues, such as primary health care, and also on the dangers of mines and ways to generate income.
2. Children need to be able to attend school; this is an important part of their personal and social development.
3. In camps of displaced persons, men, women and children need to be able to receive education and training.

2. **Access to information**

a) OVERVIEW OF PROBLEM

People need information on their security situation and on their community and social life to be able to make enlightened choices, to ensure their safety and to participate fully in their community or society.

The civilian population needs information on markets and available goods and services in order to sustain their livelihoods, to have access to goods and services, to be able to trade and also to be aware of the work of humanitarian organizations. For example, information on how and when to plant seeds or raise livestock or where to go with security concerns is vitally important. Displaced persons need information in order to make enlightened choices about their security, rights and access to assistance and training. They also need information to make a well-grounded decision as to when to return.

In situations of armed conflict, access to information is often restricted. The civilian population is often cut off from information concerning issues that directly affect their security because normal channels of communication are no longer available or are not viewed as impartial. It may be particularly difficult for women and girls to obtain knowledge or information relating to issues of security. In Bosnia-Herzegovina, for example, “women said they suffered from a lack of information during the conflict, a lack of *all* information”.^[484]

One of the reasons for this lack of information may be that in some countries information is perceived as a male domain. However, it is particularly important for women when they have become heads of households and menfolk are absent. Furthermore, restrictions placed on the mobility of women and girls for cultural or security reasons often limit their ability to be aware of security issues.

b) REVIEW OF INTERNATIONAL LAW

The question of access to information on security issues relating to the conflict and the progress of hostilities is very delicate, because such information is usually highly confidential and affects national security. The possible use and abuse of information for propaganda purposes provides further grounds for restricting access to it. Accordingly, few rules grant individuals access to information, and those that do are subject to national security exceptions.

1) International humanitarian law

International humanitarian law does not grant civilians a general right of access to information. It does, however, contain numerous provisions, discussed above in the section on *Maintenance of the family unit*, aimed at providing families with information on the fate and whereabouts of relatives from whom they have been separated. In addition, it requires parties to a conflict to take measures to protect civilians from the effects of hostilities. This requirement includes, for example, an effective advance warning prior to the launch of an attack which may affect the civilian population.^[485]

2) Human rights law

Freedom of expression, encompassing the right to impart and to receive information, is laid down in the International Covenant on Civil and Political Rights and in all regional instruments, which provide, however, that the right is not absolute but can be subject to restrictions, in particular for reasons of national security or public order.^[486] A number of these instruments also expressly prohibit propaganda, be it for war or for any advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence.^[487]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC informs the population about certain specific security problems, for example the dangers of mines, but does not provide information about the security situation in a region.

d) KEY POINT

1. Women should have access to information enabling them to make informed decisions about their security, to know their rights, and to have access to assistance and training.

J. Religious and cultural practices

a) OVERVIEW OF PROBLEM

Everyone needs the freedom to practice religion and to observe customs without persecution. This includes the freedom to observe religious and cultural festivals and days, to observe dietary restrictions and fasts, to follow dress-codes, to be able to bury deceased family members with dignity and according to appropriate religious and/or cultural practices and customs and to use one's own language.

Maintaining customs and cultural links strengthens cultural identity and keeps communities together, and often provides a means of coping with trauma and stress.

In situations of armed conflict, especially when the conflict has religious connotations, the civilian population can be targeted for practising their religion. This affects men and women in the same way, although it should be noted that since the leaders of most religions are male they may suffer disproportionately from persecution as they are directly identifiable. Religious attitudes towards the status of women in society have a bearing on the programmes or activities that can be carried out on their behalf.

Women who do not have appropriate clothing or freedom of movement, or who are in displacement may be adversely affected in terms of their ability to practise their religion, observe customs and attend a place of worship. For example, in some cultures or communities, widows may have to wear special mourning clothing but may be afraid to do so in case it marks them out as targets for persecution, especially where the deceased family member belonged to an opposition group.

Protracted armed conflict can lead to a temporary change in cultural practices. For example, even in cultures where normally men and women can live together only if they are married, war may lead to men and women living together without a formal ceremony or without the formal agreement of parents. This change in practice can be brought about as a means of “protecting” girls by marrying them off before they are “harmed” (by rape), or because girls are separated from their families or orphaned, or because the war has caused such poverty that the dowry or “bride price” cannot be paid. Practices such as polygamy can resurface or become more common as a result of war: for example, where many of the men have been killed there may be an excess of women of marriageable age and therefore men may be encouraged to take more wives.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

The rules of international humanitarian law aimed at ensuring respect for religion and religious practices take numerous different forms. First and foremost, religious freedom is recognized by the principle requiring protection and guarantees to be granted to everyone without distinction, including on the grounds of religion. Second, international humanitarian law expressly preserves the right of religious practice in different situations (in detention, in prisoner-of-war camps, in situations of occupation). Third, international humanitarian law grants religious personnel special protection and access to places of detention and other areas. Fourth, rules relating to relief actions always include a reference to items of worship among relief consignments. Finally, international humanitarian law provides special protection for places of worship.

International armed conflicts

i) General protection

The principle that everyone is entitled to humane treatment without adverse distinction is one of the cornerstones of international humanitarian law. This rule is expressly applicable to specific categories of persons in different contexts, and religion is always one of the grounds on which adverse distinctions cannot be based. Thus, for example, no adverse distinction can be drawn on the basis *inter alia* of religion with respect to: the obligation to treat the wounded, sick and shipwrecked humanely;^[488] the entitlement to the protection granted to civilians under Part II of the Fourth Geneva Convention;^[489] the right of protected persons to benefit from the rules of the Fourth Convention applicable in situations of occupation;^[490] and the entitlement to the fundamental guarantees laid down in Additional Protocol I.^[491]

ii) Right to carry out religious practices

In a number of instances, the Geneva Conventions and Additional Protocol I expressly

recognize the right to carry out religious practices and duties. Owing to the structure of the instruments, the right to religious freedom is not expressed as a general right. Instead, different categories of persons in different situations – prisoners of war, interned civilians and protected persons in occupied territories – are expressly granted the right to exercise their religion, for example by attending services of their faith.^[492]

In addition to laying down this general freedom, international humanitarian law also contains rules regarding its specific application in practice. These include the requirement that suitable premises be provided for holding religious services for prisoners of war and interned persons;^[493] the entitlement of these persons to receive shipments containing religious items;^[494] and the inclusion of religious items – alongside foodstuffs – in the supplies which must be granted free passage through the territories of States Parties to the Fourth Convention or which can be provided in relief consignments by humanitarian organizations.^[495] Particular attention is given in the Conventions to ensuring that persons who die in the hands of the enemy are buried in accordance with the rites of their religion.^[496]

In situations of occupation, the Occupying Power is required, to the fullest extent of means available to it, to ensure the provision *inter alia* of objects necessary for religious worship and to accept consignments of books and articles required for religious needs and facilitate their distribution in the occupied territory.^[497]

iii) Protection and rights of religious personnel

Also of relevance are the rules which lay down a duty to respect and protect religious personnel^[498] and which grant such personnel the right to provide spiritual assistance to the wounded, sick and shipwrecked, to prisoners of war, to civilians in besieged areas, to civilian internees and detainees and to the civilian population of occupied territories.^[499]

iv) Protection of places of worship

Another important protection of religious freedom provided by international humanitarian law is found in the prohibition on attacks on places of worship. Article 53 of Additional Protocol I expressly prohibits any acts of hostility against places of worship which constitute the cultural or spiritual heritage of peoples or making such sites the object of reprisals.^[500] At the same time, the Protocol also prohibits the use of such objects in support of the military effort. With regard to places of worship falling outside the special protection of this article – i.e. those which cannot be considered the spiritual heritage of a people – in most cases these are civilian objects which cannot be attacked unless used to make an effective contribution to military action.^[501]

Non-international armed conflicts

The principle of non-discrimination is laid down in common Article 3 and reiterated in Additional Protocol II.^[502]

Furthermore, Article 4 expressly recognizes, as a fundamental guarantee, the right to respect for the convictions and religious practices of all persons who are not tak-

ing a direct part in hostilities and, with regard to children, provides that they are to receive religious and moral education.^[503] Article 5 provides that persons whose liberty has been restricted for reasons related to the conflict must be allowed to practise their religion and, if requested and appropriate, to receive spiritual guidance from religious personnel.^[504] Article 9 requires that religious personnel be respected and protected.

Finally, the Protocol also expressly repeats the prohibition of acts of hostility against places of worship which constitute the cultural or spiritual heritage of peoples as well as their use in support of the military effort.^[505]

Individual criminal responsibility

Intentionally directing attacks against buildings dedicated *inter alia* to religion, provided they are not military objectives, is a war crime under the Statute of the International Criminal Court when committed in international or non-international armed conflicts.^[506]

2) Human rights law

Religious freedom is protected by human rights instruments in two ways: first, all the rights laid down in treaties must be granted to everyone without distinction *inter alia* on grounds of religion;^[507] secondly, the International Covenant on Civil and Political Rights, the regional instruments and the Convention on the Rights of the Child also recognize an unconditional right to freedom of religion.^[508]

3) Other bodies of law

The question of religious freedom, or rather that of persecution on grounds of religion, is also addressed in various other contexts. For example, a well-founded fear of persecution *inter alia* for reasons of religion is one of the bases for refugee status,^[509] while the principle of *non-refoulement* – which is also recognized in international humanitarian law – prohibits the sending of persons to a place where their life or freedom would be threatened *inter alia* on account of their religion.^[510] Finally, committing specified acts with the intent to destroy a religious group in whole or in part falls within the definition of genocide in the Genocide Convention.^[511]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC makes representations to parties to an armed conflict concerning problems relating to persons persecuted for religious reasons. It also monitors application of provisions of humanitarian law that specifically concern the right of prisoners of war to exercise their religion. It does the same regarding respect of places of worship.

d) KEY POINT

1. Religious and cultural practices are protected by international humanitarian law and should be respected, as are places of worship.

K. Social groups

a) OVERVIEW OF PROBLEM

Joining social groups can provide the necessary interaction for learning about domestic, security, social and cultural issues, as well as providing friendship and support. In many societies, community ties and responsibilities have not only played a strong social role but provided a support network that is an essential part of the fabric of the society. The role of women in such groups and the support they gain are important factors.

In situations of armed conflict these social groups and networks often break down or, conversely, in some situations they may grow stronger or change their focus, e.g. by becoming more political or taking on social assistance or advocacy roles. "... War has affected our traditional behaviour that is distinctive to us. We are doing many things that should have been the responsibility of the community but are now individual responsibility (...) Failure to share and live together as family or as tribe has encouraged adoption of individualistic behaviours which are not helpful to our communities. Even eventual help that we could receive from organizations are not meant for groups but for individuals (...) The community-orientated behaviour turned into an 'I don't care for the others' attitude."^[512]

b) REVIEW OF INTERNATIONAL LAW

There is no specific reference to social groups in international humanitarian law.

c) THE ICRC'S OPERATIONAL RESPONSE

In the course of its operations, the ICRC often comes into contact with different social groups. The ICRC has no specific policy on social groups but interacts with them. It may ask for their help or give them some support. For example, through its mine-awareness programmes, the ICRC encourages local groups to play an active role in increasing village security.

In Bosnia-Herzegovina, the ICRC has provided the families of the missing with basic equipment such as furniture, computers and faxes to assist them in setting up their associations and communicating with other similar groups.

d) KEY POINT

1. It should be recognized that in many societies community ties and responsibilities have not only played a strong social role but have provided a support network that is an essential part of the society's fabric. The role of women in social groups and the support they obtain are important factors in healing wounds after a conflict and in rebuilding social cohesion. The creation of such networks, in particular in countries emerging from crisis, should therefore be encouraged by the international community.

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L. Legal issues

1. **Personal documentation**

a) OVERVIEW OF PROBLEM

As mentioned previously, personal identification and registration documents are needed in order for people to be able to move freely, receive social assistance, register and often to be officially recognized. People need to be able to have credible legal status, including the possibility of registering births, deaths and marriages and gaining appropriate legal certification. People need to be able to receive documentation on the fate of their relatives, e.g. certificates and documents of death, detention, etc., in order to be eligible for inheritance, compensation or social assistance. War widows and families of the missing are especially vulnerable as such documentation or assistance is often not available to them or the entitlement was for the male relative and is not accessible to them.

In some countries, women and children rarely have personal documentation, and instead may only be included in the passport or other documentation of male relatives. In times of armed conflict, personal identification becomes particularly important. Conversely, it should be noted that personal identification documentation has been used as a means of targeting members of a particular ethnic group. A lack of identity documents is a problem experienced by many women who have lost them in the confusion of war or were never previously issued with documentation in their own right.

Women without documentation, especially in the absence of male relatives and more traditional forms of protection, can be severely restricted in their mobility and personal security – for example, at checkpoints or borders, or in camps for displaced persons where identification is usually required to receive assistance.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

Although international humanitarian law does not recognize an entitlement to personal identity documents, many of its provisions, principally those aimed at ensuring proper identification of combatants and family unity, require that such documents or other means of identification be issued.

As discussed above in the section on *Maintenance of the family unit*, the rules of international humanitarian law applicable in international armed conflicts require parties to a conflict to issue personalized identification documents or other means of identification, such as identity discs, to persons belonging to a number of specific categories, including: children under the age of 12 and children evacuated to a foreign country;^[513] persons liable to become prisoners of war (i.e. combatants and other categories of persons identified in the Third Geneva Convention);^[514] medical and religious personnel attached to the armed forces and auxiliary medical personnel;^[515] prisoners of war;^[516] civilian internees;^[517] civilian medical and hospital staff and religious personnel and medical personnel of societies of neutral countries;^[518] civilian personnel of civil defence organizations and military personnel on permanent assignment to such organizations;^[519] and journalists.^[520]

The Geneva Conventions prohibit allowing prisoners of war, civilian internees and medical and religious personnel to be without such identification documents.^[521] If persons from the first two categories do not have such documents, the Detaining Power is required to provide them.

Also of importance are the rules which provide for the transmission of death certificates or authenticated lists of the dead, and also of wills, powers of attorney and other legal documents relating to persons in the power of the adverse party.^[522]

2) Other bodies of law

The 1951 Refugee Convention requires the host State to supply identity papers to refugees in their territory without valid travel documents.^[523]

c) THE ICRC'S OPERATIONAL RESPONSE

ICRC travel documents are delivered to persons who need to travel and do not have any other official documents, but have obtained a visa for a third country. A travel

document is issued only for the duration of travel and is never considered an identity document. As soon as the holder has reached his or her destination, he or she is required to return the document to the ICRC.^[524]

The ICRC provides travel documents to persons needing to travel in all parts of the world.

d) KEY POINTS

1. Humanitarian organizations should be aware of the importance of documentation and the difficulties a lack of documents can cause, especially for women, with regard to personal security or receiving assistance. The possible consequences of a lack of documentation should be included in protection evaluations of civilian populations and if necessary representations should be made to the competent authorities.
2. It is also important to be well informed about the legal system of a given context, *inter alia* in order to be able to refer women who lack proper documentation to the competent authorities.
3. For people who have no official identification documents but need to travel, especially for family reunification purposes, an ICRC travel document or other similar document should be issued.

2. Access to effective remedy

a) OVERVIEW OF PROBLEM

1) Recourse to the law and public institutions

In many societies, men and women are treated differently under customary and national laws and may not be accorded the same rights. In many contexts women may have little or no official status or access to legal recourse. Furthermore, women are also less likely to know about the rights they do have if they have less access to education, if legal issues are perceived as the domain of the male members of the family, or if women have less access to “public” areas of life. There may be little possibility for women to seek legal advice or redress, and few possibilities to gain access to female lawyers.

Women may be deterred from approaching public authorities because of a lack of knowledge of what is involved, a lack of literacy skills enabling them to deal with the bureaucracy, and childcare and domestic responsibilities which prevent them from travelling long distances and waiting long periods for appointments.

Women need to receive assistance and remedy for abuses committed against them. In times of armed conflict there is invariably little or no recourse to effective remedy

for victims, be it in terms of protection (to stop further violations) or mechanisms for recourse to justice – traditional community mechanisms or legal courts – including for abuses committed by peacekeeping or enforcement contingents. Furthermore, signatory States may not have harmonized national legislation with international treaties and conventions concerning violations committed in situations of armed conflict.

Women who have been subjected to violence, including sexual violence, need to assess for themselves what constitutes justice, and may not necessarily want to give evidence in criminal proceedings because they do not wish their family to know what happened to them, or because of fears for their own safety and that of their family, and/or because of a desire not to live through the ordeal again by retelling it.

2) Compensation

Women and men may receive compensation and assistance for rehabilitation of injuries and damage resulting from armed conflict. Such compensation can come directly from the parties to the conflict, or be awarded through an international commission.

b) REVIEW OF INTERNATIONAL LAW

Although redress can take many forms – the Commission on Human Rights' draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law include access to justice, investigation, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition^[525] – this section will focus only on individual responsibility and compensation.

The issue of redress for violations of international humanitarian law, human rights and international law more generally, including questions of individual responsibility and individuals' right to compensation, have been the subject of important developments in recent years. The last decade has witnessed the establishment of the two ad hoc tribunals for the prosecution of war crimes, crimes against humanity and genocide and the conclusion of a treaty for the establishment of a permanent international criminal court. With regard to compensation, reference should be made to the establishment of the United Nations Compensation Commission for the indemnification of losses arising from Iraq's occupation of Kuwait, and to proceedings before national tribunals seeking compensation from persons accused of violations of international law.

1) International humanitarian law

In addition to laying down rules aimed at ensuring fundamental judicial guarantees in cases of criminal proceedings, international humanitarian law also, albeit briefly, addresses certain aspects of the question of right to a remedy: the 1907 Hague Regulations prohibit declaring "abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party".^[526] Violations of this

prohibition, if committed in international armed conflicts, are war crimes under the Statute of the International Criminal Court.^[527]

The prosecution of persons accused of war crimes and the right to compensation have long formed part of international humanitarian law.^[528] With regard to individual criminal responsibility, there have been few prosecutions at international or national level, with the notable exception of trials at the end of the Second World War. As mentioned, important developments in the field of individual responsibility have been the establishment by the Security Council of the ad hoc international tribunals for Yugoslavia and Rwanda in 1993 and 1995, respectively, as well as the adoption in 1998 of the Statute of the International Criminal Court.

Development in this area of law has been accompanied by progress with regard to compensation for violations of international humanitarian law. Instances in which individuals – as opposed to governments – received compensation were few and far between in the past. Usually compensation was paid in the form of lump-sum settlements between States at the end of hostilities, often granting affected individuals derisory amounts. Although individuals have in the past attempted to seek compensation before national courts, their claims have for the most part been rejected, either on the grounds that international humanitarian law did not grant individuals a directly enforceable right to compensation or by claims of sovereign immunity.

The situation has changed in recent years. First, there have been a number of settlements, often prompted by class-action suits in US courts, in which States, but also corporations, responsible for violations of international humanitarian law during the Second World War compensated the victims of their acts. Although this is a very positive development, it is by no means global and many victims remain without prospect of compensation.

A further interesting development in this area has been the civil cases for compensation brought in the US against individuals accused of war crimes or other violations of international law under the Alien Tort Claims Act.

2) Human rights law

Much greater prominence is given to the issue of a right to an effective remedy in human rights instruments. Both the International Covenant on Civil and Political Rights and the regional treaties require States to provide an effective remedy for violations of the rights they enshrine.^[529] Additionally, the instruments also lay down a right to a fair and public hearing within a reasonable time before an independent and impartial tribunal for the determination not only of criminal charges but also of civil rights and obligations.^[530] These rights too must be granted without discrimination *inter alia* on the basis of sex.

While the Human Rights Committee in response to individual petitions can only issue views on whether there has been a violation of the International Covenant on Civil and Political Rights, the European and American courts of human rights can also award “just satisfaction” – i.e. compensation – and the African Commission, although

not specifically empowered to do so, has considered claims for compensation.^[531] Compensation is paid by the respondent State to the individual victim.

3) Other bodies of law

An important and recent example of awards of compensation is the United Nations Compensation Commission, established by the Security Council to review and award claims for compensation for “any direct loss, damage (...) or injury to foreign governments, nationals and corporations, as a result of Iraq’s unlawful invasion and occupation of Kuwait”.^[532] This is an important precedent for two main reasons. First, because the scope of the losses compensated is not limited to violations of international humanitarian law or of human rights norms, but includes any loss which can be considered a direct result of the occupation. Secondly, individuals and other non-State entities are entitled to file claims and seek and receive compensation directly, without having to go through the intermediary of their State of nationality.

In several countries, truth commissions have also been set up to examine and investigate violations carried out in a particular country. One such commission, the Truth and Reconciliation Commission of South Africa (TRC) has, after pressure from women’s organizations, tried to increase women’s participation in reporting violations against them, including by holding special hearings where only women participate. These are intended to encourage women to come forward to tell their own stories and not just those of their male relatives.

c) KEY POINT

1. Women who have less access than men to education and to “public” areas of life should be made aware of the rights they have. Every effort should be made to ensure that women are able to seek legal advice or redress, and to obtain access to lawyers.

III.
Detention and internment
in situations of armed conflict

A. Methodology and terminology

This chapter has been compiled using as a starting point the needs of the general detainee population. It then goes on to assess the impact that those needs have on women and to consider needs that are specific to women. To illustrate the findings on this question, examples of ICRC responses to a particular problem have been included. These examples have no purpose other than to make the text more tangible and meaningful for the reader.

The information on ICRC activities included in this report was derived from the following sources: reports by delegations, discussions with headquarters personnel, debriefings with personnel from the field and field visits carried out for the study. The findings are based on the replies given and information gained from the sources mentioned above and may not be representative of all contexts.^[533] Reference to some external source material on the detention of women in wartime has also been made in order to complement or supplement information derived from internal sources.

Throughout the first part of this report little specific reference is made to young girls affected by armed conflict. In this section, their situation is covered in discussion of the situation of children detained with one of their parents. Analysis of their situation was included because of its bearing on conditions of detention for women. However, several parts of this report are relevant to the situation of girls detained for crimes they have committed or allegedly committed as many of the problems they face and their potential vulnerability are similar to those of women in detention.^[534]

The term “detainee” is used here to refer to anyone held in custody by a detaining authority and regardless of whether or not the person has been tried and/or sentenced.

B. Introduction to the law

During armed conflicts people are detained for a number of reasons. Some are held for reasons related directly to the conflict (prisoners of war, civilian internees), while others may be detained for reasons not related to the conflict (generally those detained for ordinary crimes). People may also be arrested for security reasons, which are often, but not always, related to the conflict or the internal disturbances.

Both adults and children, male and female, can be found in places of detention. Responsibility for meeting their needs and ensuring that they are treated properly rests with the detaining authorities. However, often the detaining authorities do not provide sufficient or adequate material necessities – food, bedding, clothing, water, medicines

– and detainees therefore rely heavily on the support of family members, and/or international and non-governmental organizations. In addition, detainees in many contexts are subjected to various forms of ill-treatment – sometimes even torture. Women detainees will also have needs specific to their sex in these situations.

There are detailed rules in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 concerning the treatment of persons deprived of their freedom in connection with situations of armed conflict. These rules include specific provisions on the treatment of women in detention. Human rights instruments also include general and specific fundamental rights to which persons in detention are entitled and there are also international standards governing the treatment and conditions of detained persons, such as the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

An important point must be made at the outset. The rules specifically applying in situations of detention are applicable in addition and not instead of the rules granting general protection discussed in the previous chapter (*Assessment of the needs of civilian populations with a focus on women*) of the present study. So, for example, the rules guaranteeing physical safety presented in the section on *Safety* in chapter two are obviously also applicable to persons deprived of their liberty. The present section of the study will only focus on the additional rules relating to detention.

1. **International humanitarian law**

International humanitarian law addresses the issue of persons deprived of their liberty for reasons related to the conflict in considerable detail. In addition, it establishes an important mechanism for the supervision of the rights granted to such persons by means of the visits of the ICRC (see below *The ICRC's mandate to visit detained persons* and *Procedures for ICRC visits*).

a) CATEGORIES OF PERSONS DEPRIVED OF THEIR FREEDOM

Persons may be deprived of their freedom during armed conflicts for various different reasons. According to their status and circumstances, the legal rules protecting such persons may change, without however falling short of the threshold that all persons deprived of their freedom are entitled to life, dignity and respect. Although, for the most part, the present study uses the generic terms “detainees” or “persons deprived of their freedom”, it is nevertheless important to identify the different categories of detainees and the rules protecting them.

International armed conflicts

International humanitarian law identifies the different types of detainees in international armed conflict very clearly. In particular,

i) Prisoners of war

First, there are prisoners of war.^[535] Primarily, they are members of the armed forces of a party to a conflict who have fallen into the power of the enemy.^[536] The treatment to be granted to prisoners of war is the subject of a specific convention, the Third Geneva Convention of 1949 relative to the Treatment of Prisoners of War. Additional rules for their benefit can be found in Additional Protocol I. In addition to members of the armed forces, the Third Geneva Convention provides that certain categories of persons, such as war correspondents, are also to be considered prisoners of war if they fall into the power of the enemy.^[537]

The fact that a combatant may have violated international humanitarian law does not deprive him/her of the right to be a prisoner of war should s/he fall into the hands of an adverse party.^[538] Furthermore, while, as explained below, there may be circumstances in which persons taking a direct part in hostilities may *not* be entitled to prisoner of war status, the law provides that in case of doubt, a person who takes part in hostilities and falls into the power of an adverse party must be presumed to be entitled to prisoner of war status and be protected by the Third Geneva Convention and the relevant provisions of Additional Protocol I until such time as his/her status has been determined by a competent tribunal.^[539]

ii) Other persons entitled to prisoner-of-war treatment

In addition to members of the armed forces and the other persons identified above, certain other categories of persons not considered prisoners of war are entitled to receive prisoner-of-war *treatment*, like, for example, members of medical and religious personnel.^[540] The difference between being entitled to prisoner-of-war *status* and prisoner-of-war *treatment* is important. While entitlement to prisoner-of-war treatment ensures that persons deprived of their liberty are accorded the full range of safeguards – and not just minimum guarantees laid down in Article 75 Additional Protocol I – they may be prosecuted for having participated in the hostilities.

iii) Protected persons subjected to criminal procedures

The Occupying Power may prosecute protected persons who committed an offence intended to harm it or to contravene public order and security. They are not considered as ordinary criminals, and should not be detained in the same premises. They benefit from the general principles of law such as the prohibition of retroactivity. Moreover, they have a right of defence, and if convicted, a right of appeal.^[541] (Enemy aliens in detention (pending proceedings or serving a sentence) in the territory of a party to the conflict are also protected by the Fourth Geneva Convention.^[542]

iv) Civilian internees

Protected persons may be interned or placed in assigned residence if the security of the Detaining Power makes it absolutely necessary.^[543] Any protected person who has been interned or placed in assigned residence should be entitled to have such action reconsidered.^[544] These civilian internees are protected by detailed rules laid down in the Fourth Geneva Convention.^[545] In situations of occupation, the Occupying Power is also entitled to detain protected persons for imperative reasons of security.^[546] The same conditions and protections are applicable to these persons.

v) Persons entitled to fundamental guarantees

Recognising that there may be persons deprived of their liberty for reasons related to the conflict who are not entitled to either prisoner-of-war treatment or the protection afforded to civilian internees, international humanitarian law expressly provides that such persons are at all times entitled to the fundamental guarantees laid down in Article 75 Additional Protocol I.^[547] Persons who only benefit from this generic protection include mercenaries and members of the armed forces who fall into the power of the adverse party while engaged in espionage.^[548]

Non-international armed conflicts

The position in non-international armed conflicts is simpler. In the same way that the notion of combatant does not exist in non-international armed conflicts, the concept of “prisoner of war” is also not applicable. A very important consequence of the absence of the notion of combatant in non-international armed conflicts is that persons who participate in hostilities may be prosecuted for their mere participation.^[549] This does not mean however that persons who have participated in hostilities and have fallen in the power of the enemy are not protected by international humanitarian law. Common article 3 of the Geneva Conventions and Additional Protocol II are applicable to persons detained or interned for reasons related to the conflict.^[550] Moreover, this Protocol also contains a provision on fundamental guarantees that must be ensured to all persons.^[551]

b) PROTECTION OF WOMEN :
GENERAL AND SPECIFIC PROTECTION

The “two-tiered” protection provided to women by international humanitarian law is also evident in the rules relating to detention. Women who are deprived of their liberty for reasons related to the conflict are entitled to the same general protection as men without discrimination and also benefit from additional specific rules which take into account their specific needs.

This two-tiered protection finds expression, for example, in Article 14 of the Third Geneva Convention, which states that “women shall be treated with all the regard due

to their sex and shall in all circumstances benefit by treatment as favourable as that granted to men” and in Article 16 which provides that “taking into account the provisions of the present Convention relating to (...) sex (...) all prisoners of war shall be treated alike by the Detaining Power, without adverse distinction...”.^[552]

The particular “regard” to be paid to women translates into rules relating to matters such as privacy and modesty, women’s physiological specificity, pregnancy and childbirth. Many of the rules offering women additional specific protection have already been presented in the previous chapter of this study. They are of course also applicable to women deprived of their liberty.^[553] The present part of the study will only identify the additional specific rules applicable to women deprived of their liberty.

Examples of these specific additional protections include the following requirements:

- that the cases of detained or interned pregnant women and maternity cases be heard with the utmost priority and that during hostilities the parties to the conflict endeavour to conclude agreements for the release, repatriation and return to places of residence or to a neutral country of pregnant women and of mothers with infants and small children;^[554]
- that detained or interned women be held separately from men and that they be under the immediate supervision of women;^[555]
- that interned women be searched only by female guards;^[556]
- that interned expectant and nursing mothers be given additional food in proportion to their physiological needs; that interned maternity cases be admitted to institutions where they can receive adequate treatment; and that interned maternity cases not be transferred if the journey would be seriously detrimental to their health;^[557]
- that due account be taken of people’s sex in the context of disciplinary punishments for detained and interned persons and in the utilization of the labour of prisoners of war.^[558]

Also of relevance is the prohibition on the execution of the death penalty on pregnant women or mothers with dependent infants.^[559]

2. Human rights law

As stated at the outset, the human rights norms set out in the previous chapter of this study are applicable to persons deprived of their liberty. Therefore, even though they have not been repeated in the present section of the study they must be borne in mind when considering the protection to which such persons are entitled. The present section of the study only presents the additional rights granted to detained persons, be they security detainees or persons detained for ordinary crimes. Of paramount importance is also the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

One instrument to which considerable reference will be made in the present study is the Standard Minimum Rules for the Treatment of Prisoners. This non-binding compilation of rules was adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and was approved by the Economic and Social Council.^[560]

The Standard Minimum Rules were compiled on the basis of the general consensus and the essential elements of the most adequate systems for the administration of justice at the time, with the aim of setting out what is considered as good principle and practice in the treatment of prisoners and the management of detention institutions. The drafters recognised that in view of the variety of legal, social and economic conditions in the world, not all the rules were capable of application in all places at all times. However, they could play a valuable role as a yardstick for the development of acceptable minimum conditions of detention.

Although the Standard Minimum Rules are phrased in the terms applicable to persons detained for ordinary offences unrelated to an armed conflict, they are also of relevance, by analogy, to persons deprived of their liberty for reasons related to an armed conflict.

C. ICRC visits to detained persons

1. **The ICRC's mandate to visit detained persons**

The Geneva Conventions and their Additional Protocols expressly confer upon the ICRC the mandate to visit prisoners of war and civilians detained or interned in a situation of international armed conflict.^[561] Under Article 3 common to the Geneva Conventions, the ICRC has a right of initiative to offer its services to visit persons deprived of their freedom in connection with a non-international conflict. In situations of internal disturbances or when the requirements and circumstances justify the intervention of a specifically neutral and independent institution, ICRC visits to detainees are based on the Statutes of the International Red Cross and Red Crescent Movement.^[562]

As has been mentioned earlier, it is in other cases of violence, whether covered by humanitarian law or not, that the question arises as to the definition and identification of detained persons who fall within the purview of the ICRC. In these latter cases the ICRC is concerned with persons detained in connection with such conflict or violence, whatever their crime or the status assigned to them by the detaining authorities, or the legislation invoked in order to deprive them of their freedom, or the type of

detention in which they find themselves (sentenced or unsentenced, on remand, under interrogation, etc.). Often these persons are considered as “political detainees” or “security detainees”. The ICRC has avoided giving too precise a definition of the persons whom it wishes to visit. It is clearly not enough to think in terms of a detainee’s political motives or affiliations, nor can the ICRC just consider the offence ascribed to the detainee, as political opponents are sometimes imprisoned for ordinary offences. Many people have been arrested solely on account of their ethnic or other origin, without their having ever been politically committed in any way.

As a general rule, the ICRC only visits and registers persons deprived of their freedom for reasons related to armed conflict or internal disturbances, namely, prisoners of war, civilian internees, security detainees and sometimes foreigners without diplomatic representation. Here, as in all other areas of its work, the ICRC defines those eligible to benefit from its activities according to the circumstances.^[563] In recent years the ICRC has extended the scope of its activities to persons detained for ordinary crimes if they share the same place of detention as persons arrested in connection with armed conflict, internal disturbances or other forms of civil unrest, or are suffering as a result of such situations. “Where the prevailing situation leads to the prison population as a whole to be victimized, these prisoners too are included in ICRC visits.”^[564]

As a general rule the ICRC does not want to substitute itself for the authorities by providing detainees with material assistance, and encourages the authorities to meet their responsibility of providing for the upkeep of detainees and improving their living conditions. Concretely, the ICRC will make realistic suggestions for improvement and very often provide the know-how and expertise to do so.

2. Procedures for ICRC visits

The aim of ICRC visits to persons who are detained in connection with an armed conflict or internal disturbance is to prevent disappearances and to ensure that the rules of international humanitarian law relating to conditions of detention and treatment of detainees are applied.

The ICRC endeavours to visit all places where people could be detained or imprisoned – prisons, police stations, military bases, community lockups, etc. The ICRC regularly visits the entire premises of places of detention to ensure that accommodation, hygiene, medical care, clothing, food, recreation, religious services and physical exercise are satisfactory and that the detainees can maintain regular contact with their families. It also examines the regulations in force in the place of detention and speaks in private to a significant number of detainees chosen randomly or specifically by ICRC delegates, so as to find out whether detainees are treated correctly and to ensure that their physical and psychological integrity is being respected. The ICRC reports its findings and recommendations on a confidential basis – orally and in writing

– to the detaining authorities.^[565] It does not publicly denounce abuses that it observes but raises these issues with the detaining authorities to try to put a stop to them. In this respect the ICRC is an advocate for prisoners.

The ICRC follows specific procedures in fulfilling its mandate to visit persons deprived of their freedom (see Annex).

3. **ICRC visits to female detainees**

Communicating with someone from outside the prison setting is a break in detainees' daily routine and gives them an opportunity to talk about their plight. Female detainees may have specific problems that they want to discuss with a woman who is not from the detaining authorities, e.g. ill-treatment including sexual violence, gynaecological problems, menstruation, or pregnancy. Women may not feel comfortable discussing such matters with a man for many reasons. For example, it may be inappropriate for cultural or religious reasons to meet with a man and discuss such issues. Women who are detained for "crimes of honour", and women from cultures and religions where contact between males and females is strictly regulated, could also be perceived as placing themselves in an "inappropriate" situation if they have contact with a man who is not a member of their family. In many contexts where ill-treatment and sexual violence are an issue, the question of "contact" is more complex. Experience has shown that often a woman victim of problems such as those mentioned above may want to get an informed medical evaluation or advice from a doctor – in which case the sex of the doctor will be much less important than his or her expertise.

Except for visits from family members, ICRC delegates are often the only people who see the detainee in private. Detention visits are carried out by both male and female ICRC delegates, doctors and other health personnel. According to ICRC guidelines, detention teams should not be composed of all male or female delegates, except where the presence of one or the other sex is prohibited by the detaining authorities for religious, cultural or legal reasons. The team should be composed of male and female delegates with appropriate training. The aim is to create the most "approachable" team for detainees, so they have the option to speak to either a male or female delegate about their problems, situation, fears, etc. "It is important that the composition of visiting teams should be suited to the particular environment and its specific constraints. Doctors, interpreters, ICRC representatives – men and women – all have a precise role to play and qualities to display. Thus, the question of the sex of delegates is often raised whenever they work in societies or environments where their place or function is traditionally different from those recognized in Western societies. Here again it is best to avoid excessively rigid solutions."^[566]

An examination of the number of male and female detention delegates (ICRC delegates who visit detainees) and coordinators was made for 1998 and 1999. Overall,

there was about the same number of female and male detention delegates.^[567] In a few countries in Asia and Africa, for cultural or religious reasons, the detaining authorities themselves have refused to let male delegates visit female detainees. This policy has meant that in a few cases the ICRC has not been able to visit places of detention because of a lack of female staff.

During the ICRC's introductory course for new delegates, instruction is given by ICRC medical and detention specialists on how to hold interviews with detainees. The following main messages are given: be sensitive in interviews; avoid interrogation-style interviewing and establish a dialogue (do not have a checklist of questions, or reduce interviews to yes/no answers; be tactful); do not pry or intrude on the privacy of prisoners, especially with regard to sexual ill-treatment and if the detainee is of the opposite sex, and, if the delegate is uncomfortable with the interview, refer the detainee to an ICRC doctor if he/she so wishes; be aware of and understand the context of humiliation and degradation, modesty and reserve, and realize that several visits may be needed before a person is ready to talk; be aware of cultural, religious and ethnic groupings; maintain confidentiality and privacy when conducting interviews. Silence does not mean there are no problems.^[568]

D.

Profile of female detainees and minors

There are fewer women than men in detention throughout the world. It may be estimated that 4-5% of a country's detainee population will be female. Women may be detained in connection with an armed conflict as prisoners of war, as civilian internees, as security detainees, etc. In some countries, women are also detained under customary or penal law for offences related to their social conduct, often termed "crimes of honour". This means that they are deemed to have contravened the rules of local law or custom governing the conduct of women, and are detained as punishment. Inversely, in some contexts, women will be held by detaining authorities for their own protection, so as to avoid being killed by family members or by others. Sometimes women may choose to be detained in order to escape a hostile environment (male and/or family pressure). Women are also arrested for ordinary crimes unrelated to conflict. Let us comment briefly on some of these categories:

Detained female combatants: Detained female combatants are few in number, both in relation to the overall number of women detained and in relation to the number of male combatants detained. This reflects the fact that women are also in the minority in the armed forces of countries which allow women to serve, and the fact that where

women are enlisted they may not be allowed to operate in combat or in front-line areas (and are thus less likely to be captured).

Women held for security reasons: Again, the number of women held for reasons of security related to armed conflict and internal disturbances is very small in comparison with that of men. This is due to general factors: male civilians are far more likely to be perceived as combatants or potential combatants, and consequently to be detained or interned, than female civilians. Women may be less exposed to this sort of risk than men and therefore less likely to be detained. Women are sometimes released after a relatively short time in detention for “cultural reasons”, i.e. because the authorities detaining them think it is not culturally acceptable for women to be away from their families. In one Middle Eastern country where several female combatants were detained, the authorities were trying to contact their families so that they could be collected. The authorities stated: “We cannot keep them, they are women.”^[569] However, in other contexts, women may have cumulative life sentences for “political-terrorism”-style crimes – and subsequent needs related to long-term imprisonment.

Women detained for ordinary crimes: The majority of women in detention are detained for ordinary crimes. They are frequently met by the ICRC during its visits and often provided with material assistance. In some countries, the ICRC pays particular attention to women detained for ordinary crimes because of their conditions of detention or treatment.

Women detained for “crimes of honour”: Women detained for “crimes of honour” or who are in custody for their own protection may remain in prison for long and indefinite periods. They may be detained for various contraventions, for example running away from their husbands or refusing to marry a man of the father’s choice. They may be accused of being raped or of travelling without being accompanied by a male member of the family, or of talking with a boy/man. The ICRC has no specific mandate to register such persons but follows an ad hoc policy of providing them with assistance and protection.

Minors: Minors detained in connection with their own (alleged or real) acts also require special treatment (such as separate detention quarters from adults). The age at which a child is considered a minor and can be detained differs from country to country according to national legislation and internal prison regulations. In addition to minors detained for crimes they themselves allegedly committed, there are also children detained with their parents. This may be because they were with their parents when the latter were taken into custody/internment; or because there is no other relative to look after them; and/or because the detaining authorities allow children to stay with their parents and the parents wish them to do so. There are no rules in international instruments regarding whether children can stay with their mothers/fathers in detention and/or regarding the age up to which children can stay with their parents. Such rules, therefore, may differ between countries and even between different places of detention within the same country. In certain situations, such children are also at risk of disappearance or enforced separation, either in order to put pressure on their parents (or family members) or because they might be taken for adoption or persecuted

on account of their ethnic origin. Furthermore, infants and children have specific needs regarding nutrition, hygiene, medical care, access to sunshine, etc.

E. Housing of detained persons

1. Organization in places of detention

a) OVERVIEW OF PROBLEM

Persons deprived of their freedom should be housed in appropriate places according to their length of detention. Persons detained in connection with an armed conflict or internal disturbance should be separated from those detained for ordinary crimes unrelated to the conflict to avoid tension between the two groups.

Women and children should have separate accommodation from men so as to allow them maximum protection and privacy, and to meet cultural and religious requirements. This principle should be applied unless women are detained in a family unit,^[570] in which case family members should be accommodated together, which is a rare situation.

Women detained with babies and children may need to be detained in separate quarters from the rest of the prison population. Pregnant women and nursing mothers must have a place of detention where they can receive appropriate care and their special needs can be met.

In reality, not all countries have special places of detention for women. Most that do have few such establishments, meaning that some women have to be held far from their families. In some cases, a single prison holds female detainees from all over the country. Women may also be housed in a prison intended for men and given accommodation in a separate wing or section, although in reality physical separation may be minimal. This is generally a result of limited financial and general resources available to the detaining authorities, and often means that the provisions of international humanitarian law with regard to the separation of male and female detainees, and sentenced and unsentenced detainees, are not respected.

1) Separation between male and female detainees^[571]

In many of the countries reviewed for this study, during the initial stages of arrest/interrogation in police stations, women are commonly detained in the same place as men. They may be detained separately or in the same quarters as the male detainees. After this initial stage, they are usually transferred to a place of detention where they are held separately from men. The detention of women in the same prisons

as men often results in problems for the movements of detainees and for their access to the open air. For example, if the prison courtyard is communal, resulting in men and women sharing it, one sex may be locked up when the other sex has access. When this is the case, men are sometimes allowed longer access to the courtyard than women. To give another example, women may have 24-hour access to the corridor, but they choose to lock themselves up in their cells because men have access to the corridor too.

Sometimes the prison authorities find *ad hoc* solutions, such as letting the women stay in the guards' cells, or in huts on top of the prison, or in the yard while waiting for a cell for women to be built. This may result in specific protection problems.

Freedom of movement or access to the open air is therefore often much more restricted for women than for men. This is particularly the case in mixed prisons holding only a few women. There are reportedly several reasons for this: the buildings used are not designed to accommodate women, so there is no separate yard for them; or there is no proper separation between women and men so the women have to be kept locked up for their own security; or there are no female guards to guard them; or the women are the victims of discrimination.

2) Separation between different categories of detainees

As the overall number of women detained is small, places of detention often hold in the same section a mix of detainees held for ordinary crimes and security detainees, sentenced and unsentenced, without any separation between them. This can exacerbate tensions in an already difficult environment. For example, where women detained for ordinary crimes and female security detainees are kept in the same places of detention, the security detainees may be afraid of the women detained for ordinary crimes. Fights may break out between different groups of detainees. Women detained in connection with the hostilities sometimes want to be held separately from the women detained for ordinary crimes.

3) Detainees with babies or children

Women who have their children with them in detention may lack the necessary space and privacy for their own well-being and that of their children. The noise and pressures (crying, illnesses, etc.) from having a child present may exacerbate tensions with other detainees in the same cell.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

International humanitarian law lays down numerous rules relating to the places in which persons may be interned or detained. The two principal concerns are the location and basic conditions of the places of detention and the grouping of different categories of persons deprived of their freedom.

International armed conflicts

Location of places of detention: Prisoner-of-war camps and places of detention for interned civilians must not be located in areas particularly exposed to the dangers of war, and must not be used to render certain points or areas immune from military operations.^[572]

Under the Third Geneva Convention, prisoners of war and other persons entitled to prisoner-of-war treatment, if interned, must be detained in premises located on land, affording every guarantee of hygiene and healthfulness. If interned in unhealthy areas or where the climate is injurious to them, prisoners of war and civilian internees must be removed as soon as possible to a more favourable climate.^[573]

Grouping of persons deprived of their freedom: In order to ensure the safety and privacy of different categories of persons deprived of their freedom, international humanitarian law provides that different groups of persons should be held in separate detention facilities, or at least in different quarters. The first important separation is between prisoners of war and civilian internees on the one hand and persons detained for reasons unrelated to the conflict on the other.^[574]

The second important division is between women and men. In prisoner-of-war and civilian internment camps, and when prisoners of war or civilian internees are detained for disciplinary punishment, women must be confined in separate quarters from men and must be under the immediate supervision of women.^[575]

Finally, whenever members of the same family are deprived of their liberty, international humanitarian law requires them to be held in the same place and accommodated as family units.^[576]

Non-international armed conflicts

Additional Protocol II also addresses the two principal issues relating to places of detention: safety and the grouping of persons deprived of their liberty.^[577] It provides that places of internment and detention must not be located close to the combat zone and that internees and detainees must be evacuated if these places become particularly exposed to danger arising from the armed conflict, provided the evacuation can be carried out in adequate conditions of safety.

With regard to the grouping of persons deprived of their liberty, the Protocol provides that, except when men and women of a family are accommodated together, women must be held in quarters separate from those of men and must be under the immediate supervision of women.^[578]

2) Human rights law

The International Covenant on Civil and Political Rights and the American Convention on Human Rights both address the issue of separation of certain categories of persons deprived of their freedom. Both instruments require accused persons to be detained separately from convicted persons serving their sentences and minors from adults.^[579]

The Standard Minimum Rules for the Treatment of Prisoners also contain similar rules regarding separation of different types of detainees, including an express requirement that, as far as possible, women be detained in separate institutions from men and that in institutions accommodating both sexes the premises allocated to women be entirely separate.^[580]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC endeavours to ensure that detaining authorities hold men and women, adults and minors, and detainees held in connection with hostilities and those held for ordinary crimes in separate places of detention, or, as a minimum, in separate quarters of the same prison. It makes representations to the detaining authorities to follow the provisions of international humanitarian law in this regard. If members of the same family are detained, the ICRC endeavours to ensure that they are accommodated together. The ICRC takes a pragmatic approach in determining what constitutes a family unit, depending on the cultural and community relationships in different societies. It also endeavours to ensure that family links are maintained between detainees of the same family being held in separate places of detention. In certain prisons the ICRC has financed or organized the building of separate quarters/sections for women.

In places of detention where both men and women are detained, the ICRC insists on the following aspects with the detaining authorities:

- the physical separation (through walls) of women and men;
- rules and regulations governing the relationship between guards and detained persons, particularly women;
- the arrangements for daily life for female detainees (e.g. communication between detainees and guards, and with male detainees according to certain rules);
- sufficient and private access to open air, and adequate material conditions of detention for women;
- privileged access to open air and opportunities for physical exercise for pregnant women and children accompanying their mothers.

d) KEY POINTS

1. Men and women should be held in entirely separate places of detention throughout the period of their detention. Where separate places of detention are not provided, men's and women's quarters in the same place of detention must be totally separate. Women should be provided with sufficient access to the open air and sunshine in premises respecting their privacy.
2. Women detained for ordinary crimes should be held separately from security detainees, and sentenced and unsentenced persons should likewise be detained separately.

3. Children should be detained in places separate from adults, except when accompanying a parent. Adolescent girls and boys should be held in separate facilities or accommodation.
4. It is important to ascertain whether places of detention are providing appropriate accommodation for pregnant women and nursing mothers, and whether these women face particular problems related to their place of detention.

2. Transfers

a) OVERVIEW OF PROBLEM

Detained persons may be transferred from one place of detention to another. This may be done for security, logistic, administrative, legal or humanitarian reasons. The decision to transfer a detainee is taken by the judicial or detaining authorities. Detained women should be held within a reasonable distance of their homes or families, and may have to be transferred to achieve this.

b) THE ICRC'S OPERATIONAL RESPONSE

When the ICRC has registered a detainee, it endeavours to keep track of the person concerned even after his/her release or transfer to another place of detention, by continuing to visit him/her and to maintain contact throughout the period of detention. The ICRC itself may ask the detaining authorities to transfer a detained person to another place of detention for his/her own protection or on humanitarian grounds. If the ICRC asks the authorities for the transfer of a female detainee from a mixed prison to a women's detention centre, it takes the following factors into account: the wishes of the detained woman, the location of the court which is in charge of the woman's case, the location of the woman's family and the possibility of family visits, better living conditions in the women's detention centre, the presence of female guards, and the possibility for the woman and any children detained with her to stay together.

c) KEY POINTS

1. Authorities should keep record of all transfers of detained persons.
2. All transfers should respect the integrity and dignity of detained persons.
3. As far as possible, detained members of the same family should be held in the same place of detention.

F. Treatment and security

1. Prison personnel

a) OVERVIEW OF PROBLEM

The role of guards and other personnel in places of detention is to implement the prison rules and regulations, to protect the detainees – from persons inside and outside the prison – and to prevent them from escaping. All staff of the detaining authorities have a responsibility to ensure that detainees are treated properly and not subjected to ill-treatment.

Women and girls need female guards for supervision and possible searches so as to ensure that they enjoy maximum protection, privacy and dignity, and also to comply, where appropriate, with religious and cultural dictates. Frequently guards and other detention personnel are male, especially during night duty and in prisons where both male and female detainees are held. This can create privacy and safety problems for women when they use the toilets and washing facilities, when being searched and in security checks. A lack of female guards can also lead to restrictions in freedom of movement within the prison and access to the open air for female detainees, as well as fewer opportunities to pursue recreational and educational programmes.

Women should be able to live free from intimidation and from ill-treatment such as sexual violence.^[581] The recruitment of female guards alone does not guarantee correct treatment of female prisoners. Recruitment must be followed by adequate training, and the treatment of male and female detainees must be clearly defined by rules explaining the expected role and behaviour of prison guards on duty. The absence of female guards, however, can cause many problems, such as ill-treatment, sexual harassment, limited mobility, lack of appropriate assistance, increased humiliation during body searches,^[582] etc. Guards need to be trained and supervised to ensure the security of detainees and must be disciplined when violations occur.

“Alternative” systems of rule may be put into place inside a prison by men and/or women detainees. Sometimes such systems are introduced and organized by the detaining authorities, but in many prisons they are a “normal” part of community life; the way in which relationships among detainees and different groups of detainees evolve depends on such systems.^[583] In several countries the prison authorities choose particular inmates to serve as guards, assisting the authorities in keeping the prison under control. For example, in one country the guards and the head guard are detainees. This system is a blueprint for abuse and is reportedly very tyrannical, with frequent beatings. It also apparently involves privileges for certain detainees. The ICRC is very much aware of the likely presence of an internal hierarchy or repressive system among detainees, especially between different ethnic, clan or caste groups and/or those

perceived as being collaborators, but the dynamics of such systems vary from place to place and are very difficult to understand, as detainees can rarely talk about them.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

As stated above, in both international and non-international conflicts international humanitarian law provides that women whose liberty has been restricted for reasons related to the conflict must be held under the immediate supervision of women.^[584] Additionally, the Fourth Geneva Convention provides that female civilian internees may only be searched by women.^[585]

2) Human rights law

The Standard Minimum Rules for the Treatment of Prisoners address the issue of supervision in considerable detail. Rule 53 provides that first, in an institution for both men and women, the part of the institution set aside for women must be under the authority of a responsible woman officer, who must have custody of all the keys to that part of the institution; secondly, that no male member of staff may enter the part of the institution set aside for women unless accompanied by a woman officer; and, thirdly, that women prisoners must be attended and supervised only by women officers.

With regard to searches and body-cavity searches, in its General Comment on the right to protection against arbitrary or unlawful interference with privacy, family, home, or correspondence, the United Nations Human Rights Committee held that effective measures must be taken to ensure such searches are carried out in a manner consistent with the dignity of the person being searched. In particular, persons subjected to body searches by State officials or medical personnel acting at the request of the State should be examined only by persons of the same sex.^[586] Body-cavity searches are not medical acts, but “police acts” and, as such should not be performed by doctors unless a detainee specifically requests a doctor.^[587]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC frequently reminds authorities of their obligation under international humanitarian law to provide female guards for female detainees and to ensure that such staff are appropriately trained, and reiterates that the relationship between guards and detainees has to be defined by a clear framework of internal prison rules describing and regulating the expected behaviour of guards in accomplishing their tasks. The ICRC can sometimes offer to provide the detaining authorities with assistance for the proper training and instruction of guards in the treatment of detainees and their conditions of detention.

d) **KEY POINTS**

1. Detaining authorities should be regularly reminded of their obligation under international law and internationally recognized standards to ensure that detained women are guarded and supervised by women.
2. In a mixed detention place, the women's quarters must be under the overall supervision of a female authority, who must have custody of all keys to that part of the institution. No male guard or representative of authority may enter the women's quarters without being accompanied by a female prison staff member. Only female guards may supervise detained women. However, this does not exclude the possibility of male personnel, especially health personnel and teachers, entering the women's quarters in order to carry out their professional duties.
3. The administration in a place of detention should not allow some detainees to exercise authority over others – detainees' roles and functions in the prison organization should be kept under control.

2. **Prohibition of ill-treatment**

a) **OVERVIEW OF PROBLEM**

All forms of ill-treatment of detainees are prohibited. The detaining authorities must refrain from such practices themselves and also protect detainees from ill-treatment at the hands of others. Ill-treatment is any form of torture or cruel, inhuman or degrading treatment.^[588] Examples of ill-treatment are physical violence, threats to life, sexual violence, unnecessary and abusive body searches (including strip searches), solitary confinement, separation from or disappearance of children, abusive and degrading language, and prohibition of family visits.

For women especially, there are no clear-cut boundaries between physical, psychological, sexual and social violence. Indeed any violence perpetrated on women, by definition vulnerable in detention, always carries the idea of a possible sexual aggression. This is an essential difference that is often not recognized in dealing with visits to prisoners.

During arrest and/or while in detention, women are all the more exposed to the risk of ill-treatment because they rely totally on others for their protection and are outside their normal or traditional social protection systems. Some forms of humiliating ill-treatment are particularly likely to be used against women, for example forcing them to stand a whole day without allowing them to go to the toilet, or not allowing them to wash for weeks after menstruation and making fun of them. It is also humiliating for a woman to be accused in jail of "not being the right kind of woman", in other words of having a low level of morality, which is allegedly confirmed by her being in prison.

The special vulnerability and needs of pregnant women must be also recognized. Pregnant women who are victims of ill-treatment or held in inhumane conditions face the additional threat of miscarriage or permanent injury to themselves and their unborn child. Often, detaining authorities not only ignore their special needs but take advantage of their vulnerability to inflict severe physical and emotional pain on them.

Women need to be free from pressure to grant sexual services to personnel of the detaining authorities, and especially from being coerced into relationships in exchange for better conditions or treatment. Threats or violence against the children of detained women may also be used as a form of cruel and inhuman treatment against the women concerned. Both mother and child need to be protected from such abuse. “The police obviously realized that the best way to weaken women detainees was to make them believe that their children were dead or dying. This would play on their worst fears as mothers and expose their deepest vulnerabilities.”^[589]

Sexual violence

During interrogation and detention women are often undressed and exposed to physical, sexual and psychological abuse and humiliation. There are many difficulties and taboos which prevent women from reporting violations against them, especially sexual violence.^[590] Furthermore, women may not have the words to describe the abuse they have experienced. “Although both men and women are subjected to sexual assault, a distinction needs to be drawn between them. Sexual torture as such, particularly during interrogation, with its full spectrum of humiliation and violence that can, and often does, culminate in the rape of the victim, is more common with women prisoners. In male prisoners, direct violence to sexual organs is more common during this same phase.”^[591]

There are many ways in which persons can be ill-treated, but rape and other forms of sexual violence are often predominant where women are concerned. Some forms of sexual ill-treatment are specific to women, for example, enforced impregnation, enforced pregnancy^[592] or enforced termination of pregnancy, and enforced maternity.^[593] Other forms of ill-treatment can also be inflicted on women, e.g. in some extreme cases damage to reproductive organs, cutting of breasts and assault and electric shocks on pregnant women. Ill-treatment may result in miscarriages or the inability to bear children. “Behind the sexual torture of women is the activation of sexuality to induce shame and guilt.”^[594] Such ill-treatment is prohibited at all times and women must be protected from it.

Women may require assistance to be able to cope with the physical and psychological consequences of ill-treatment, especially sexual violence. They need to be able to speak privately and confidentially, if they so choose, to a professional from outside the detention setting. Access to professional advice, counselling and assessment by a trained medical doctor are often essential to their well-being. Women who experience sexual torture have often been told by their tormentors: “you will never be able to have a baby again”, “your future children will be abnormal”, “your husband will notice you were raped”.

For the medical aspects and consequences of sexual violence, see the section on *Health and medical care* in the present chapter. Women often feel enormous shame and cultural pressure not to disclose what has happened to them and may feel constrained to remain silent because of their personal, cultural and religious beliefs. These beliefs may be played upon as part of the ill-treatment, which can exacerbate its effects. The following quote explains how one woman felt. “One woman said that in her country a victim of rape would not see the face of Muhammad on the last day. The meaning was that she would never enter paradise, but would be condemned to the flames of Hell for eternity.”^[595]

Women may also be faced with having to raise, voluntarily or forcibly, a child born as a result of rape while in detention. In detention, the possibilities of terminating an unwanted pregnancy are minimal, even if termination is legal in the country. Medical care for pregnant women and breast-feeding mothers is rare or inadequate, trauma counselling is not available and family support networks may be non-existent, or may break down completely, especially if sexual violence is suspected. Women who have been the victims of rape often have to cope with the very real additional fear that they may be shunned or abandoned if they reveal what has been done to them.

b) REVIEW OF INTERNATIONAL LAW

All the rules of international humanitarian and human rights law set out in the previous chapter of the study (*Assessment of the needs of civilian populations with a focus on women*) relating to personal safety are applicable to persons (men and women) deprived of their freedom. Moreover, recognizing that it is when they are in detention that individuals are at greatest risk of torture and other cruel, inhuman or degrading treatment or punishment, both bodies of law contain additional provisions expressly addressing this situation. Furthermore, mechanisms have been set up which enable independent bodies to carry out visits to persons deprived of their freedom so as to assess their conditions of detention and to prevent or put an end to ill-treatment.

The rules on penal and disciplinary measures discussed below (in the section on *Disciplinary measures*) are also of relevance.

1) International humanitarian law

International armed conflicts

The Third Geneva Convention provides that prisoners of war must be treated humanely at all times and that they are entitled to respect for their persons and their honour in all circumstances.^[596] Unlawful acts or omissions by the detaining authority causing death or seriously endangering the health of prisoners of war are serious breaches of the Convention.^[597] The Convention also prohibits reprisals against prisoners of war and subjecting them to physical mutilation or to medical or scientific experiments not justified by the medical treatment of the person concerned. In addition

to prohibiting the Detaining Power from itself ill-treating the prisoners of war, the Convention also requires it to protect them from acts of violence or intimidation and from insults and public curiosity.^[598]

The Third Convention also expressly prohibits the use of physical or mental torture and any other form of coercion in order to secure information of any kind from prisoners of war.^[599]

Non-international armed conflicts

The requirement of humane treatment and the prohibitions against violence to life and person – in particular murder, mutilation, cruel treatment and torture – and against outrages upon personal dignity – in particular humiliating and degrading treatment – laid down in Article 3 common to the Geneva Conventions are expressly applicable to persons in detention.

Moreover, all persons deprived of their freedom for reasons related to the armed conflict are expressly entitled to the fundamental guarantees laid down in Article 4 of Additional Protocol II.^[600] The Protocol also prohibits physical mutilation and scientific experiments on persons whose liberty has been restricted.^[601]

2) Human rights law

The prohibitions on torture and cruel, inhuman and degrading treatment set out in the previous chapter of the present study (*Assessment of the needs of civilian populations with a focus on women*, section *Safety*) are also applicable to persons in detention. Additionally, the International Covenant on Civil and Political Rights and the American Convention on Human Rights expressly provide that all persons deprived of their liberty must be treated with humanity and respect for the inherent dignity of the human person.^[602]

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that all persons under any form of detention or imprisonment must be treated in a humane manner and with respect for the inherent dignity of the human person, and that no such person may be subjected to torture or cruel, inhuman or degrading treatment or punishment.^[603]

Reference should also be made to the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,^[604] and of the United Nations Human Rights Commission's Special Rapporteur on Torture. By means of visits to places of detention, these bodies aim to prevent or put an end to ill-treatment of persons deprived of their liberty.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC tries to prevent and put an end to ill-treatment of persons deprived of their freedom. It gathers information from detainees and seeks corroboration for their

statements whenever possible in any physical and psychological signs observed by the ICRC delegate/doctor^[605] during his/her visits. With the individual prisoners' permission, the ICRC passes on allegations of ill-treatment to the authorities. The ICRC also tries to identify the causes of any ill-treatment, e.g. a poorly organized detention system. It informs the authorities concerned at all levels of the prevailing pattern and intensity of abuses and seeks through dialogue to bring about the necessary changes. See below in the section on *Health and medical care*.

The ICRC also attempts to raise awareness of the plight of women detainees who are victims of sexual violence, and of the existence of rules in humanitarian law prohibiting ill-treatment and outrages upon personal dignity. An ICRC doctor stated: "One thing is certain: women detainees are more likely to be raped than men. This does not mean that men are never raped – in fact, they are – but women are usually the primary victims. (...) One must be aware of the fact that sexual torture – and this encompasses more than "just" rape – is widespread in all countries where torture is practised. As in the case of rape in society, under-reporting is the rule, not the exception."^[606] Stripping a woman naked during interrogation or threatening to do so is considered as a sexually violent act which is humiliating and degrading for the female detainee, and as an attack on her dignity and integrity.

The ICRC's practical experience has shown that a detainee will often discuss issues more openly with health personnel because they can explain the medical repercussions of ill-treatment.^[607] All pregnant detainees should be seen by the ICRC doctor of the team.

In some cases solitary confinement of female detainees was reported as amounting to ill-treatment, considering the limited space and the psychological conditions. Women will also suffer from being separated from their children.

d) KEY POINTS

1. Physical and psychological abuse, especially sexual abuse, of detainees by staff of detention facilities and by any person entering the premises is prohibited. Detaining authorities must acknowledge and enforce this prohibition.
2. Detaining authorities and prison personnel should be made aware of the rules prohibiting ill-treatment and in particular sexual violence.
3. Disciplinary and security systems in places of detention have to take account of and respect the personal security and dignity of female detainees and ensure that they are treated with the consideration which is due to their sex (e.g. with regard to strip and body cavity-searches by members of the opposite sex, intimate medical examinations, solitary confinement separating them from their children).
4. Pregnant women and nursing mothers should be given special attention, and non-intrusive interviews should be held with them to determine whether they are pregnant as a result of abuse and in need of assistance.
5. Victims of ill-treatment, especially sexual violence, may need several individual

interviews before they are ready to speak about what has happened to them, if they ever speak out at all. Silence should not be interpreted as evidence or as an indicator that sexual violence has not occurred. Factors to be evaluated are, for example: how many detainees receive an individual interview and how often; is there a real possibility of spending long periods with individual detainees, in private, and of repeating this several times; whether detainees have access to female visiting personnel, doctors and interpreters. All these factors should be taken into consideration in evaluating whether an environment conducive to confidential statements about abuses and to a relationship of trust between visiting personnel and detainees is really being established. This is especially so with women, who may be even more reluctant to speak about what is happening to them than men.

6. There should be more systematic follow-up of released female detainees to complement information received from them while in detention.
7. Visiting personnel should receive particular guidance regarding sexual violence in detention, focusing on medical consequences, protection, legal aspects, how to assist and respond to victims of sexual violence, etc.
8. Visiting personnel must be able to handle interviews with victims of ill-treatment in a sensitive manner, and the important role of the visiting medical doctor must be clearly defined.

See also key points in the section on *Health and medical care* of the present chapter.

3. Disciplinary measures

For the purposes of this study, disciplinary measures are defined as punishments imposed by detaining authorities on detainees who have contravened established rules and regulations. Authorities may impose disciplinary measures in order to maintain order and the security of the detainees but in doing so must respect international humanitarian law and human rights. Regulations on disciplinary measures include details relating to the place, duration and conditions of solitary confinement; the use of forced labour as a punishment; the possibility of speaking with officials; the right of appeal against punishment; the imposition of restrictions in regard to conditions of detention, family visits, etc.; relations between prison authorities and detainees; and internal administrative organization of detainees. These rules and regulations must be known to the detainees.

a) OVERVIEW OF PROBLEM

When disciplinary measures or punishment are imposed on women, due respect must be shown for their physical and psychological integrity and their safety, dignity and

health. In the case of pregnant women and nursing mothers, special attention should be paid to their condition, and the needs of any children detained with them must be taken into consideration. When disciplinary measures are necessary to maintain an orderly prison regime, the mother should be punished in a way that does not cause undue harm or trauma to the child detained with her. Children should not be separated from their parents as a form of punishment.

b) REVIEW OF INTERNATIONAL LAW

1) **International humanitarian law**

International humanitarian law contains a number of provisions which deal with disciplinary measures. In addition to these provisions it should be borne in mind that the rules prohibiting torture and cruel and degrading treatment are also applicable. The prohibitions in Article 3 common to the Geneva Conventions and in Additional Protocol II are particularly relevant as the issue of disciplinary punishment is not expressly regulated in non-international armed conflicts.^[608] The Third Geneva Convention provides that prisoners of war are subject to the laws, regulations and orders in force in the armed forces of the Detaining Power and may be the subject of disciplinary or judicial measures for their violation.^[609] Penalties for such violations may not, however, take the form of collective punishment, corporal punishment, imprisonment in premises without daylight or any form of torture or cruelty.^[610] Furthermore, disciplinary punishment may never be inhuman, brutal or dangerous to the health of prisoners of war.^[611]

The Third Geneva Convention also expressly provides that female prisoners of war may not be awarded or sentenced to a more severe punishment or be treated more severely when undergoing punishment than female or male members of the Detaining Power's forces for a similar offence.^[612]

Similarly, the Fourth Geneva Convention provides that the laws in force in the territory on which civilians are interned apply to internees who commit offences during internment.^[613] The above-mentioned safeguards are applicable by analogy to disciplinary measures taken against civilian internees.^[614] Disciplinary penalties may not be inhuman, brutal or dangerous for the health of internees and account must be taken of the internees' age, sex and state of health.

Additionally, the Fourth Convention provides that the disciplinary regime in places of internment must be consistent with humanitarian principles, and may not include regulations imposing on detainees any physical exertion dangerous to their health or involving physical or moral victimization. In particular, it prohibits prolonged standing and roll-calls, punishment drill, military drill and manoeuvres, and the reduction of food rations.^[615]

2) Human rights law

The prohibitions on torture and cruel, inhuman or degrading treatment or punishment discussed in the previous chapter of the study (*Assessment of the needs of civilian populations with a focus on women*, section on *Safety*) and in the above section on *Prohibition of ill-treatment* impose important limitations on the penal and disciplinary measures which a detaining authority may adopt.

Additionally, the Standard Minimum Rules for the Treatment of Prisoners prohibit corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments for disciplinary offences by prisoners.^[616]

c) THE ICRC'S OPERATIONAL RESPONSE

At the beginning of a detention visit, ICRC delegates tour the detention facility in order to see all places where detainees are held, including cells for disciplinary punishment. ICRC delegates demand to have private talks with prisoners in solitary confinement. The ICRC also examines the functioning of the penitentiary system, in particular the way disciplinary measures are communicated to the detainees and carried out.

d) KEY POINTS

1. If disciplinary measures are imposed, they should always be in line with international humanitarian law and human rights.
2. The detainees must be informed about the following: the types of behaviour that are punishable by disciplinary measures; the types and maximum duration of the disciplinary measures; the authority that decides on these measures and the authority that implements them; and the possibility of an appeal against such measures.
3. Specific consideration must be given to pregnant women and mothers of nursing infants, so as not to cause any prejudice to the foetus or baby.

G. Conditions of detention

1. **Accommodation (quarters, lighting, bedding, heating, ventilation, access to the open air)**^[617]

Detainees must be provided with accommodation suitable to the length of their detention, with sufficient space to maintain the physical and psychological well-being

of the number of persons accommodated. International standards prescribe that detainees must have adequate living space which is well ventilated and lit. Detainees' quarters should also be appropriately heated/cooled according to the climate. Furthermore, each detainee must be provided with suitable bedding, in accordance with local conditions (bed/matting/mattresses, blankets, etc.) which should be replaced when no longer fit for the purpose through normal wear and tear. Detainees also need regular access to the open air with sufficient space to walk about and exercise, so as to maintain their good health and well-being. It is the responsibility of the detaining authorities to provide all the above-mentioned facilities.

a) OVERVIEW OF PROBLEM

More often than not, places of detention become overcrowded and temporary facilities may have to be used. Places of detention housing women are normally smaller than those housing men owing to the lower number of women detained. This means that they can become overcrowded. Overcrowding is not merely a question of surface area available – it also depends on freedom of movement outside the cell and on the duration of daily access to the open air. Overcrowding creates unhygienic conditions and tense situations, conducive to the spread of disease and to increased violence, stress and sometimes even promiscuity among detainees. Overcrowding also places detention personnel under increased strain and can thereby increase tension between staff and detainees.

Women, especially pregnant women and women with children, need sufficiently spacious and appropriate accommodation to ensure their physical and mental health. Furthermore, they need sufficient access to the open air and the possibility to exercise.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

The Third and Fourth Geneva Conventions contain a number of detailed provisions concerning the conditions of detention of prisoners of war or internees. The conditions must make allowance for the habits and customs of the prisoners and must in no case be prejudicial to their health.^[618] Article 3 common to the Geneva Conventions and the provisions of Additional Protocol II on humane treatment are to be taken into account in non-international armed conflicts.^[619]

International humanitarian law also provides that prisoners of war must be given the opportunity to take physical exercise and to spend time out of doors, and requires that all prisoner-of-war camps contain open spaces for this purpose.^[620]

2) Human rights law

The Standard Minimum Rules for the Treatment of Prisoners lay down detailed

minimum conditions to be met by places of detention.^[621] Among other things, such places must fulfil all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. Moreover, the Rules provide that every prisoner must have at least one hour daily of suitable exercise in the open air if the weather permits.^[622] The ICRC always stresses that whenever possible a greater length of time outside should always be allowed for all detainees.

c) THE ICRC'S OPERATIONAL RESPONSE

Providing adequate conditions of detention is the responsibility of the detaining authorities. The ICRC assesses the needs of detainees, taking into consideration the local, social and cultural context, and attempts to get to know the prisoners' everyday environment. After holding an initial talk with the detaining authorities, delegates thoroughly assess all the premises and facilities used by the detainees and endeavour to ascertain the daily routine of the prison. They also call upon the detaining authorities to meet their obligation to provide decent material and psychological conditions of detention.^[623]

Where the detaining authorities cannot ensure decent conditions of detention, the ICRC may have to provide detainees, both male and female, with material assistance. On occasion, the ICRC has provided materials and supplies or taken steps to adapt detention facilities to the specific needs of female detainees. For example, the ICRC financed the installation of windows in a cell for women in Rwanda, and an annex for women in a prison in Chad; it also improved the women detainees' compound in a prison in Ethiopia by providing building materials. Its assistance is appropriate to the local culture, habits and environment. It has also helped detaining authorities to solve some of their administrative or technical problems in order to improve conditions of detention for detainees (for example, a project to develop energy-saving stoves in Ethiopia), which has been beneficial to women.^[624]

In accordance with the principles of humanity and impartiality of the International Red Cross and Red Crescent Movement, the ICRC may assist women detained for ordinary crimes when they are considered to be living in particularly poor conditions and receive no assistance from the detaining authorities, and/or where they share a cell or place of detention with persons traditionally visited and assisted by the ICRC. Care is taken in this approach not to interfere unduly with the internal systems of prisons or to cause problems for those the ICRC is trying to help. In particular, a careful assessment has to be made each time before providing assistance, to ensure that internal coping mechanisms are not upset. For example, providing assistance to one group of detainees and not another could lead to threats and violence against the beneficiaries of ICRC aid.

d) **KEY POINT**

1. Women in detention have specific needs (for example in terms of water/hygiene and privacy) which should be taken into consideration. To acknowledge this is not to give priority or unequal attention to female detainees, but to recognize that women and men have different, as well as converging, needs, vulnerabilities and coping mechanisms to deal with their situation.

See also the section on *Organization in places of detention*.

2. **Food and water**

a) **OVERVIEW OF PROBLEM**

The detaining authorities are under an obligation to provide adequate and sufficient food to maintain the health and well-being of all detainees, with supplementary provisions for those who work and for nursing mothers and pregnant women. The food provided should take into account the detainees' normal diet, and may be prepared either by the detainees themselves – in which case appropriate means for preparation of meals has to be available – or by the detaining authorities.^[625]

Detainees may in some cases receive remuneration from the detaining authorities for work performed in prison, with which they can purchase food themselves from prison shops or from local markets through the guards, the prison administration or, in rare cases, “trusted” detainees. Local custom may require that detainees' families bring food to their relatives in detention. Such assistance from families should only be a supplement and does not relieve the detaining authorities of their responsibilities.^[626]

It happens that the detaining authorities do not provide food in adequate quantities and quality to maintain the health of detainees. A poorly balanced diet (with insufficient quality, quantity and diversity of food) can lead to malnutrition, or outbreaks of diseases, such as scurvy, beriberi, pellagra or xerosis, owing to a lack of vitamins. Furthermore, within the prison system there must be equitable distribution of, and access to, food to preclude discrimination against the vulnerable and to avoid tension among detainees.

Pregnant women and nursing mothers require a supplementary diet sufficient to maintain their own health and that of their babies. Furthermore, pregnant women should not have to queue or stand for long periods in order to get their daily meals. If nursing mothers are not able to produce sufficient milk to feed their babies, they must be given appropriate and safe milk powder, clean drinking water, and hygienic conditions and proper equipment to maintain their children's health. They must also receive proper instructions, if necessary, on how to prepare milk.

The detaining authorities have a duty to provide sufficient water suitable for drinking and food preparation, and for purposes of washing and hygiene.^[627] Women should have access to sources of water and hygienic means of collecting and storing it (buckets, barrels, water containers) for their own use. Breast-feeding women need additional fluids (drinking water) to maintain their health and milk production, as well as supplements of protein, calcium and trace elements, in a richer diet than the rest of the population.

In places of detention, water is often a scarce commodity and water-supply systems can be old and in need of maintenance. International standards for places of detention provide that drinking water should be available to every prisoner whenever needed.^[628]

In fact, women held in places of detention where they are in the minority are often housed in sections which do not have adequate access to water. They may have to collect water from the male section, often in dirty buckets and/or from old taps.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

International armed conflicts

The provisions of the Third and Fourth Geneva Conventions relating to the supply of food and drinking water to prisoners of war and civilian internees respectively are virtually identical. The Detaining Power must provide for the maintenance of the detainees free of charge.^[629] The basic food rations must be sufficient in quantity, quality and variety to keep the detained persons in good health and to prevent loss of weight or the development of nutritional deficiencies. Account must also be taken of the habitual diet of the prisoners. Detainees who work must be given additional rations in proportion to the kind of labour that they perform. Detainees must be given the means to prepare any additional food in their possession, and, in the case of prisoners of war, they must be associated as far as possible with the preparation of their meals, and may be employed in the kitchen for this purpose.^[630]

The Fourth Convention expressly provides that expectant and nursing mothers as well as children under the age of fifteen must be given additional food, in proportion to their physiological needs.^[631]

Both Conventions also stipulate that canteens must be installed in all places of detention where detainees may purchase food at prices not higher than local market prices,^[632] and that persons deprived of their liberty may receive individual parcels or collective relief shipments containing, *inter alia*, food.^[633]

Non-international armed conflicts

Additional Protocol II provides that persons deprived of their liberty for reasons related to the conflict must be provided with food and drinking water to the same extent as the local civilian population.^[634]

2) Human rights law

The Standard Minimum Rules for the Treatment of Prisoners require the detaining authority to provide prisoners with food of nutritional value, adequate for health and strength, of wholesome quality and well-prepared and served.^[635]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC insists that it is the responsibility of the detaining authorities to provide the detainees with food and drinking water. Thus, as a general policy, the ICRC does not provide food, to avoid substituting itself for the detaining authorities and to avoid their shirking their responsibilities. In rare cases it steps in to provide food assistance as a last resort, in case of severe malnutrition, and as a temporary measure.

Whereas doctors assess the nutritional situation of detainees to see whether they are receiving a balanced diet, ICRC delegates examine who provides the food (families or the detaining authorities) and how it is distributed.

The ICRC often carries out various renovation/rehabilitation programmes for water-supply systems in places of detention where the authorities are not in a position to do such work themselves (installation of water tanks, repair of water pipes and taps, etc.). The ICRC can also provide water containers (jerry cans, buckets, etc.) for collection and storage of water for prison kitchens and for communal/individual cells.

The ICRC has no rigid policy as to how many litres of water per day the authorities should provide for each detainee. Instead it stresses that each detainee must receive an amount of water corresponding to his/her needs, which can be different according to the situation (e.g. climatic conditions and whether detainees are male, female or children). Women need more water than men, particularly during menstruation or after giving birth.

The ICRC, like many other organizations, has adopted a strict policy on the distribution of milk powder, but is faced with the problem of detained mothers with young babies who are unable to produce sufficient milk to feed them. In most cases, the ICRC will not be in a position to instruct young mothers on the proper techniques for breast feeding. In such cases, an adequate substitute has to be found to maintain the baby's health and development, so the ICRC has provided milk powder for nursing mothers or infants on an *ad hoc* basis in response to specific needs and circumstances. Often the detaining authorities do not provide sufficient cooking and eating utensils or means for water collection and storage. The ICRC may supply water storage and cooking/eating utensils in places of detention. The assistance activities carried out by the ICRC in such places are too numerous to be reviewed for this study. However, it can be said that assistance provided in places of detention goes to both male and female detainees, as appropriate.

d) KEY POINTS

1. There should be equitable access to and distribution of food for female and male detainees.
2. Consideration should be given to family visits, in particular when detainees depend on their families for supplementary food, or for an adequate amount of food.
3. Pregnant women and nursing mothers should be given priority access to a supplementary diet.
4. Women with children in detention should be supervised to establish whether they reduce their food intake in order to give more to their children, and whether the children are receiving an adequate diet for their healthy development. Mothers should also be properly instructed in preparing wholesome and safe milk for their babies.
5. Cooking and food preparation should ideally be carried out in appropriate (safe, well-ventilated and sufficiently spacious) conditions and not in cells where detainees are living.
6. Safe and suitable means of water storage and collection should be provided for both women and men.
7. Women in general, and pregnant women, nursing mothers and women with children in particular, need additional water and this should be taken into consideration by the detaining authorities.

3. Clothing

a) OVERVIEW OF PROBLEM

The detaining authorities must provide suitable clothing, appropriate to the climatic and living conditions, for all detainees under their responsibility. Detainees who work must be provided with clothing suitable for the work carried out. Additional clothing should be available to allow clothes to be washed, and clothing should be replaced when no longer fit for its purpose. Clothing provided by the authorities for female detainees must be appropriate to ensure their privacy and dignity, especially in prisons where they may come into contact with men. Such clothing must comply with religious and cultural requirements.

Detainees may be required to make clothes and uniforms to be worn in the prison as part of their obligation to work. Relatives of detainees may also be able to provide additional clothing during family visits.

Pregnant women may need to be given additional clothing as the pregnancy progresses, and nursing mothers need extra clothing to maintain their personal hygiene.^[636]

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

The Third Geneva Convention provides that effects and articles used for the clothing of prisoners of war must remain in their possession.^[637] The Convention requires the Detaining Power to supply prisoners of war with clothing, underwear and footwear in sufficient quantities, making allowance for the climate of the region where the prisoners are detained. Moreover, prisoners of war who are required to work must be provided with appropriate clothing, wherever the nature of the work demands.^[638]

The Fourth Geneva Convention provides that internees, when taken into custody, must be given all facilities to provide themselves with the necessary clothing, footwear and change of underwear and, later, to procure further supplies if required. The clothing supplied to internees by the Detaining Power and any external markings placed on their own clothes must not be ignominious or expose the internees to ridicule. Detainees who are working must be provided with suitable working outfits, including protective clothing, if the nature of their work so requires.^[639]

Prisoners of war and civilian internees must be allowed to receive individual parcels or collective relief shipments containing, *inter alia*, clothing.^[640] Although the issue of clothing for detainees is not expressly addressed by Additional Protocol II, the rules requiring that persons deprived of their liberty for reasons related to the armed conflict be afforded protection against the rigours of the climate and that they be allowed to receive individual or collective relief are of relevance to this issue.^[641]

2) Human rights law

The Standard Minimum Rules for the Treatment of Prisoners deal with the issue of clothing in considerable detail. They provide that prisoners who are not allowed to wear their own clothing must be provided with an outfit suitable for the climate and adequate to keep them in good health. The clothing may not be degrading or humiliating. Underclothing must be changed and washed as often as necessary for the maintenance of hygiene.^[642]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC regularly reminds the detaining authorities of their obligation to provide detainees, both male and female, with adequate clothing.

The ICRC has distributed clothing to female (and male) detainees and their children where such items, for example warm clothes for the winter, are not provided by the detaining authorities. In doing so, it takes into account the cultural habits of detainees.^[643] Specific items have been provided for female detainees (dresses, underwear, brassieres, sarongs) and baby clothes have been handed out. Generally, the ICRC distributes locally purchased clothing or material for making clothes.

d) KEY POINTS

1. Clothing provided to female detainees should be appropriate for the maintenance of their dignity and in conformity with cultural and religious dictates.
2. Spare clothing should be provided so that women can wash their clothes and still have something to wear to maintain dignity, privacy and hygiene.

H. Health and medical care

a) OVERVIEW OF PROBLEM

The detaining authorities have a responsibility to provide free medical care^[644] and medicines to all detainees, either in medical facilities at the place of detention or, if the medical condition cannot be adequately treated there, in a suitable medical establishment.

The health of the prison population can be particularly precarious because of overcrowding, the limited resources allocated for their care, and the possible deficiencies of medical care in prison. All detainees need access to medical personnel and to appropriate medical facilities to treat their illnesses and injuries and those of their children, and to receive the necessary medicines. In detention, access to medical treatment is often controlled by non-medical staff of the detaining authorities who have little or no training in assessing the urgency of cases (triage) and no written protocols on screening patients. This can mean that sick detainees have difficulty obtaining access to a doctor and to treatment. In addition, they may have to pay to have access to medical personnel and for medicines.

Female detainees have specific medical needs which are different from those of men. In detention and other unfavourable conditions women and girls are more vulnerable to health problems owing primarily to their reproductive function, including menstruation, which can lead to anaemia and mineral deficiencies. They may also suffer from gynaecological disorders. Women need regular access to adequate medical check-ups, treatment and medicines, including gynaecological, obstetric, and prenatal and postnatal care, in accordance with the standards of the country. In places of detention there is often no access to a gynaecologist, and obstetric and gynaecological services are inadequate. The specific health-care needs of women are rarely taken into due account. As an ICRC doctor stated: “indeed they are often neglected, in particular the care needed by pregnant women. Few prisons have special facilities and medical equipment for women, so patients and doctors usually have to make do with what happens to be available. (...) Even in prisons with a mixed population, women have less easy access to a doctor than men.” The doctor noted that pregnancies coming to term in

prison can involve a considerable risk of complications, owing to a lack of prenatal check-ups and proper obstetric care. Psychological and social stress, the absence of a social support network, an adverse physical and psychological environment and an abnormal mother-child relationship can aggravate these situations.

Pregnant women should be admitted to a professional medical establishment to give birth. Particular attention should be paid to pregnant women detained for infringing customs or criminal rules relating to illegitimate pregnancies or rape, as they often have to give birth in very difficult conditions. Babies and children detained with their mothers (like the population outside the prison) need to be regularly immunized against diseases and must have access to fresh air and sunlight. To safeguard newborn babies, mothers should have the necessary equipment for maintaining hygiene when breast-feeding and items such as spoons and cups for preparation of baby food.

Women – as men – should have access to a medical examination upon arrival in the place of detention and on a regular basis during the course of their detention to ensure that they are healthy and that any medical problems are identified and treated. Medical examinations should be carried out by qualified medical personnel, and vaginal, anal, breast and similar examinations should not be carried out in the presence of non-medical personnel of the opposite sex. Women have to be protected from humiliating and abusive examinations. These intimate examinations may occur as part of “body searches” during interrogation,^[645] or can be part of a medical examination. They are often a very humiliating experience for women, especially when conducted by or in the presence of male prison personnel or police officers.

In 1993, the World Medical Association issued a Statement on Body Searches (or body-cavity searches) of Prisoners^[646] because cases of prisoner harassment by such practices had been reported repeatedly in previous years. According to this Statement, prison systems in many countries mandate body searches (which can include rectal and pelvic examination) of prisoners. These body searches are performed for security reasons and not for medical reasons, and therefore should not be performed by a medical person. It further states that “to the extent feasible without compromising public security, alternate methods [should] be used for routine screening of prisoners, and body cavity searches should be resorted to only as a last resort; if a body cavity search must be conducted, the responsible public official [should] ensure that the search is conducted by personnel with sufficient medical knowledge and skills to perform the search safely; [and] the same responsible authority [should] ensure that due regard for the individual’s privacy and dignity be guaranteed”.^[647]

Sexual abuse of women in detention is widespread and often has far-reaching consequences, such as trauma, sexually transmitted infections including HIV/AIDS, pregnancy, unsafe termination of pregnancy by the detainee herself or by the detaining authorities or even death. Women who have been sexually abused in detention need appropriate assistance, treatment and counselling. Victims of sexual violence will want to know whether they have contracted any sexually transmitted infection and be counselled on whether they will be able to conceive in the future.^[648]

Women who have become pregnant as a result of rape in detention need counselling on the choices available to them – to keep the baby or terminate the pregnancy if it is legal to do so^[649] – and on how to raise these issues with the detaining authorities. Abused detainees often will not want any representation to be made of their plight to the detaining authorities, either out of fear of reprisals, or because of cultural or personal reactions of shame. Great care must be taken in such cases to balance the victim's non-consent with measures necessary to ensure such acts do not continue. Victims should receive necessary medical treatment with due consideration to the above-mentioned caveats. Medical staff and other persons visiting detainees in prison should be aware of the symptoms displayed by victims of sexual violence (and know that these symptoms are not always the same for everyone, and not always evident). Then, if the victim so chooses, she can be approached to discuss the abuse and any medical treatment and protection that she needs.

Some conditions and diseases (tuberculosis,^[650] skin diseases, sexually transmitted infections, HIV/AIDS, diarrhoea, malaria, etc.) are particularly prevalent among detainees. Women should have access to health education and preventive programmes to minimize the risk of infection. Female detainees are at risk of contracting HIV/AIDS in prison, mainly from intravenous drug use and sharing of needles – whether from “shooting drugs” or from syringes re-used for medical treatment, etc. Female detainees are more vulnerable to sexual transmission of HIV than men. Heterosexual transmission of HIV is more likely from man to woman than from woman to man. Several factors increase the risk of the spread of the virus for women, such as a high incidence of gynaecological infections, inflammatory conditions and sexually transmitted infections, a high proportion of drug users among women, a low socio-economic level, lack of health education and information on preventive methods, and the high risk of perinatal transmission from mother to child. Testing for sexually transmitted infections, and especially for diseases such as HIV/AIDS, should be carried out on a voluntary basis only, and only if there is the possibility of proper testing, appropriate medication, confidentiality and counselling. The prison provides a unique forum for giving information and education to women who may not have access to them once they leave.^[651]

b) REVIEW OF INTERNATIONAL LAW

Both international humanitarian law and the Standard Minimum Rules for the Treatment of Prisoners expressly address the issue of medical care for persons deprived of their freedom. Additionally, the rules relating to hygiene and sanitation, discussed in the section on that topic below, and those relating to the conditions and location of places of detention set out in the relevant sections above, are also of particular relevance.

1) International humanitarian law

International armed conflicts

The initial premise is that the Detaining Power is under an obligation to provide, free of charge, any medical attention required by the state of health of persons deprived of their freedom.^[652] The Third Geneva Convention deals in detail with the issue of medical care for prisoners of war.^[653] It provides that every prisoner-of-war camp must have an adequate infirmary, and if necessary, isolation wards for contagious or mental diseases. Prisoners of war suffering from serious diseases or who are in need of special treatment, surgical procedures or hospital care must be admitted to military or civilian hospitals where such treatment can be provided. Periodic check-ups must also be carried out to assess the fitness of prisoners of war for work, with particular regard to the nature of the work which the prisoners of war are required to perform.^[654] The Convention also contains detailed provisions relating to the repatriation of seriously wounded or sick prisoners of war. The Detaining Power is under an obligation to repatriate such persons, regardless of number and rank, having cared for them until they are fit to travel.^[655]

The Fourth Geneva Convention addresses the issue of the health of civilian internees in similar terms.^[656] It specifically provides that maternity cases and internees suffering from contagious diseases, or whose condition requires special treatment, surgical procedures or hospital care, must be admitted to an institution where adequate treatment can be given, and must receive care not inferior to that provided for the general population.

Finally, it should be mentioned that medical supplies form part of the relief shipments that prisoners of war and interned civilians are allowed to receive, either individually or collectively.^[657]

Additional Protocol I takes up and develops an issue which was only touched upon by the Third Geneva Convention: that of medical experiments.^[658] As stated above in the section on *Prohibition of ill-treatment*, the Protocol prohibits subjecting persons deprived of their liberty to any medical procedure not indicated by the state of health of the person concerned. In particular, the Protocol prohibits physical mutilation, medical or scientific experiments, and the removal of organs or tissue for transplantation.^[659]

Non-international armed conflicts

Article 3 common to the Geneva Conventions provides that the wounded and sick must be collected and cared for. Additional Protocol II contains more specific provisions relating to medical treatment of persons deprived of their liberty. It provides that persons deprived of their liberty for reasons related to the conflict must be afforded safeguards as regards health to the same extent as the local population, and must have the benefit of medical examinations.^[660] The Protocol also contains the prohibition on medical procedures which are not indicated by the state of health of the person concerned and which are not consistent with generally accepted medical standards applied to free persons under similar medical conditions.^[661]

2) Human rights law

The Standard Minimum Rules for the Treatment of Prisoners – both women and men – also address the issue of medical services in considerable detail, including the special needs of detained women and matters relating to mental health.^[662]

Among other things, the Rules provide that the services of at least one qualified medical officer with some knowledge of psychiatry must be available at each place of detention. Sick prisoners requiring specialized treatment must be transferred to specialized institutions or to civilian hospitals.

The Rules also expressly address the specific medical needs of female detainees. They provide that in women's institutions there must be special accommodation for all the necessary prenatal and postnatal care and treatment. Arrangements must be made, wherever practicable, for children to be born in a hospital outside the place of detention. Where nursing infants are allowed to remain in the place of detention with their mothers, provision must be made for a nursery staffed by qualified persons where the infants are to be placed when they are not in the care of their mothers.^[663]

c) THE ICRC'S OPERATIONAL RESPONSE

ICRC doctors document the physical or psychological effects of conditions of detention. Documenting ill-treatment, and providing specific counselling and support in cases of torture and ill-treatment to the victims, is one of the specific tasks of ICRC doctors. The doctor is in a privileged position, vested with medical authority and expertise which allows him or her to talk to and advise a prisoner within the special patient-doctor relationship.^[664] ICRC medical personnel assess detainees' nutritional status, hygiene and living conditions (drinking water, ventilation of premises, latrines, overcrowding and its consequences on the prisoners' mental and physical health, etc.) as well as the personnel and facilities available for medical care; they also check whether the prison population actually does have access to this care.^[665] ICRC doctors do not give medical treatment, except in extremely serious cases requiring emergency action.

“What can be achieved within the short period of time allotted to the doctor during the ICRC visit is to give the individual prisoner the opportunity to consult a medical professional who sympathizes with his or her plight.(...) The ICRC doctor can offer counsel and guidance. (...) The prisoner can then count on a medical advocate for any necessary therapy that is in fact available while he or she is still in detention.”^[666] The ICRC can also provide prison medical authorities with medicines to supplement stocks in hospital infirmaries and help authorities to arrange for the transfer of patients to appropriate medical facilities for treatment. In its dialogue with the medical personnel of detention places as well as with medical authorities within the system of detention, the ICRC encourages the best possible use of available resources and promotes due respect of medical ethics towards patient detainees. The ICRC also

intervenes at the national level, where it recommends structural reforms if necessary.

The ICRC has a position paper on HIV/AIDS. In connection with HIV testing, this document states: “Behavioural change will only occur if testing is integrated in a comprehensive HIV/AIDS prevention and care package. Given that the ICRC presently does not engage in implementing comprehensive prevention and care programmes, testing for individual diagnosis should not be integrated in ICRC’s general health programmes yet. (...) The ICRC should not get involved in testing for epidemiological surveillance: the outcome has no consequences for preventive activities and may increase discrimination of certain population groups. Mandatory testing is ethically unacceptable.”^[667] Thus the ICRC does not carry out HIV/AIDS testing but regularly recommends that the detaining authorities take the necessary precautions to avoid infection with HIV/AIDS (during medical examinations/treatment). The ICRC also promotes and/or supports HIV/AIDS prevention in prisons and harm-reduction programmes implemented by detaining authorities for intravenous drug users.^[668]

In a prison where there was no gynaecologist, the ICRC doctor together with the doctor of the prison “discovered” a woman in her fifth month of pregnancy. This shows what can happen when there is no specialist on hand. The pregnant woman had not benefited from any prenatal care or general follow-up and the prison administration was not aware of her condition. Women have reportedly sometimes given birth in the dispensary or the consultation room of the prison. The ICRC regularly recommends to the authorities, for reasons of safe medical practice, that all pregnant women be transferred to the local hospital to deliver their babies. Often, however, detainees have to pay for their transfer to hospital and are unable to do so.

In the course of their visits to places of detention, ICRC delegates frequently encounter detainees suffering from mental illnesses. The situation of such detainees is often alarming, owing to a lack of proper care and sometimes physical coercion, such as being kept handcuffed. At the beginning of 1995 the ICRC launched a project to take care of mentally ill inmates in three prisons.

d) KEY POINTS

1. A general medical examination on arrival in the place of detention should be a standard procedure to assess the health of detainees and to determine whether a woman is pregnant and requires specialist medical care.
2. Detainees should receive medical treatment and medicines free of charge. Access to specialists should be part of the health services available to detainees.
3. Male medical staff should, wherever possible, be accompanied by female medical staff when carrying out examinations of female detainees. Such examinations should not be observed by non-medical male prison personnel.
4. Detainees should receive primary health education with regard to the transmission of infectious diseases.

5. People with mental illnesses should not be detained in prisons but in appropriate mental health institutions. If they are detained they should receive appropriate medical and psychiatric care.

Pregnant women and women with children

1. Pregnant women and nursing mothers should be provided with appropriate medical care, including gynaecological, obstetric, prenatal and postnatal care.
2. Arrangements should be made for all pregnant women to give birth in an appropriate medical establishment.^[669]
3. Where babies and infants are allowed to remain with their parent(s) in detention, appropriate provision must be made for their medical treatment and vaccination against diseases (as given to the local population).

Sexual violence

1. Detaining authorities must provide victims of sexual assault with medical and psychological care and protection from further abuse.

See also the section on *Prohibition of ill-treatment* in the present chapter.

I. Hygiene and sanitation

a) OVERVIEW OF PROBLEM

The detaining authorities have a duty to provide sufficient sanitary facilities with safe access for the detainee population. The detaining authorities should also ensure that all quarters and facilities – toilets, showers, cells and yards, kitchens and storage areas, and installations for waste and water evacuation – are cleaned regularly. Cells should be free of vectors of disease (ectoparasites, rodents, insects, etc.), which can cause the spread of malaria, bubonic plague, rickettsiosis, etc.

Detainees should have regular access to toilet and washing facilities in order to maintain health and hygiene and to limit the spread of infections and illnesses. Because of their physiological needs, women as a rule require more water for washing than men. However, it is often the case in custodial establishments for women that detaining authorities do not provide adequate resources to maintain hygienic and sanitary conditions of detention. Toilet facilities for women and girls should offer them privacy and security and should be separate from those of men.^[670] Where women do not have regular access to toilets outside their cells, they must be provided with appropriate buckets and lids for use in their cells. Waste must be regularly and hygienically removed from cells and sanitary facilities to avoid the spread of disease.

Sanitary conditions often are worse for women than for men, as they have less access to water and toilets. There are several different reasons for this: women are not detained in a separate section from the men so cannot easily have access to the toilets and shower rooms; there are not enough female guards to take the women to the toilets; and/or the section they are housed in does not contain such facilities. When sanitary facilities do not offer adequate privacy, women may not use the showers and toilets provided for them as they could be watched by male guards or male detainees.

Menstruation is an important issue affecting many aspects of women's detention, such as health, clothing and hygiene. Menstruating women and pregnant and nursing mothers need more frequent access to sanitary facilities to wash themselves and their clothes so as to preserve their dignity and health. The provision of adequate (and culturally acceptable) sanitary protection and sufficient clothing is vital.

Women generally lack such sanitary protection because the detaining authorities rarely provide it. Female detainees who cannot purchase sanitary towels often use unsanitary and, therefore, unsafe alternatives. Such is the case in many contexts.

b) REVIEW OF INTERNATIONAL LAW

In addition to the rules set out below which specifically address the issue of hygiene and sanitation, reference should also be made to those relating to prison conditions and medical treatment cited in the relevant sections above.

1) International humanitarian law

The Third Geneva Convention requires the Detaining Power to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps, and to prevent epidemics. Moreover, in any camps accommodating women, separate conveniences must be provided for them.^[671] Prisoners of war must be provided with sufficient water and soap for their personal toilet and for washing their personal laundry.^[672]

The Fourth Geneva Convention lays down identical rules with respect to places of detention for civilian internees.^[673]

In case of non-international armed conflict, Additional Protocol II provides that persons who have been deprived of their liberty for reasons related to the conflict must be afforded safeguards as regards hygiene to the same extent as the local civilian population.^[674]

2) Human rights law

The Standard Minimum Rules for the Treatment of Prisoners require that sanitary installations in places of detention be adequate to enable detainees to relieve themselves whenever necessary in a clean and decent manner. Adequate bathing and shower facilities must be provided at temperatures suitable to the climate, and to enable detainees to wash as frequently as necessary for general hygiene according to the season and geographic location, but at least once a week in a temperate climate. All sanitary

pans in a place of detention must be properly maintained and kept scrupulously clean at all times.^[675]

Additionally, the Rules provide that detainees must be required to keep their persons clean and to this end must be provided with water and such toilet articles as are necessary for health and cleanliness. Facilities must also be provided to enable detainees to take proper care of the hair and beard and for men to shave regularly.^[676]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC assesses prison facilities with regard to sanitation, including water supply, elimination of sewage and solid waste, the presence of vectors of disease like rats and parasites, and general living conditions (ventilation and cleanliness). It also assesses the access of detainees to sanitary facilities, e.g. the frequency of access to showers, and separate sanitary facilities for women. ICRC water and sanitation experts frequently visit places of detention to survey the relevant systems and carry out the most urgent work, such as rehabilitating sanitation facilities, renovating parts of buildings, and purchasing and installing pumps.

In many countries the ICRC provides assistance in the form of hygiene items such as soap, clothing, sanitary pads for women, buckets and jerry cans for carrying and storing water. This is generally done in contexts where the authorities are not in a position to supply the necessary materials. The ICRC provides such assistance but at the same time looks for appropriate associations who could take over this responsibility (e.g. church groups, NGOs). It also makes recommendations to the detaining authorities and discusses with them the best possible use of the resources available and/or the necessity of increasing them.

d) KEY POINTS

1. Sanitary facilities should be adequate to maintain hygiene and health by enabling detainees to have regular access to toilets and to wash themselves and their clothes. This is an essential aspect of self-respect and respect for others.
2. Sanitary installations must be accessible to detainees at all times to allow them to take care of their bodily needs in a way that respects their dignity as persons.
3. Showers, washing facilities and toilets must ensure privacy for detainees.
4. If the women's section is in a part of a male prison, and if the water source is in the male quarters, women should have safe (without intimidation and abuse) and regular access to water.
5. Special arrangements must be made for female detainees who are pregnant or menstruating and who are with children (e.g. greater amounts of water and supply of hygienic products, increased access to sanitary facilities, etc.). Such women need to

be able to maintain their privacy and dignity while cleaning themselves (access to sanitary facilities without intimidation and without being watched by male guards or detainees, etc.). They also need to be able to clean their children and clothes as often as necessary (bathing or showering once a week is insufficient).

6. It is essential that appropriate materials for cleaning detention places be provided in order to avoid the spread of disease by vectors.
7. Particular attention should be paid to the hygiene needs of children detained with their mothers to ensure that they are not suffering undue hardship because of the prison conditions.

J. **Restoring and maintaining family links**

1. **Maintaining the family unit: Children and detention of a mother**

“Toutes les femmes m’ont dit que ce dont elles souffraient le plus en prison, c’était d’être séparées des êtres aimés – de leurs enfants, surtout.”^[677]

In many places of detention, adults, primarily mothers, are accompanied by their children in detention. Children may be detained because they have no other relative to look after them; or because the mother/father refuses to be separated from the child (in some cultures the social status of a woman is higher with a child; or the woman might lose all her rights to the child if it is given into care); or because children are detained as part of a family under suspicion. The age up to which a child can remain with a parent depends on the detaining authorities and differs not only from country to country but, in some countries, from institution to institution. In some places of detention, children are not allowed to accompany their parents at all.

a) OVERVIEW OF PROBLEM

Detainees need to be in contact with their families to exchange family news, to make their period of detention easier psychologically, and to receive assistance where possible.

Women often play the central role in the family unit, and detained women often suffer acutely from separation from their children – especially babies and young children – and from lack of information as to their well-being. They therefore need to have contact with them, including physical contact. Women may have to be given assistance to have contact with their children because of the distance of the place of detention

from their homes, because contacts outside the prison are restricted, or because they do not know the whereabouts of their children.

In some cases, women may enter the prison pregnant or become pregnant while in detention. Babies may also be taken away from their mothers immediately after birth or when the mother is discharged from hospital. Many women (especially nursing mothers) find enforced separation from their children particularly traumatic and one of the most difficult aspects of their detention. The effects on the children could also be psychologically damaging. Nursing mothers should therefore be able to keep their newborn babies with them in detention if this is in the best interests of the children, and, if separated from them, must be informed of their whereabouts and be allowed to maintain frequent physical contact.

b) REVIEW OF INTERNATIONAL LAW

The rules requiring accommodation of families as a unit while in detention are set out in the section on *Places of detention* above. The Fourth Geneva Convention expressly provides that civilian internees may request that their children who would be left at liberty without parental care be interned with them.^[678] International law does not stipulate a maximum age up to which children may be detained with their parents.

The Convention on the Rights of the Child deals with this issue from the reverse angle. It aims to ensure that children are *not* detained on the basis of their parents' activities. Accordingly, the Convention requires States Parties to take all appropriate measures to ensure that children are protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of their parents or family members.^[679]

However, the Convention also requires States Parties to ensure that children are not separated from their parents against their will, unless such separation is in the best interests of the child. This provision could obviously be relied upon to request that a child be held in detention with his/her parents. Should separation occur, children have a right to maintain personal relations and direct contact with their parents on a regular basis, and if the separation is due to the detention of the parent(s), the State is required to provide essential information on the whereabouts of the absent member(s) of the family.^[680]

c) THE ICRC'S OPERATIONAL RESPONSE

The presence of a child in detention with a parent raises two important issues. On the one hand a place of detention is obviously not the most suitable place to raise a child, but on the other hand the relationship between parent and child has to be maintained in order to avoid psychological damage to both. The ICRC's response depends on the internal prison rules and on the context, taking into account the particular personal

situation of a parent detained with a child, as well as the best interests of the child. The first point of reference is of course the wishes of the parent: does the parent want the child to stay with him/her or does the parent prefer to give the child into the care of relatives? It is very difficult to decide what is in the best interests of parent and child in recommending that children not be detained with their parents; the ICRC therefore does not enter into the theory of this debate but instead approaches the issue case by case, promoting the best-adapted humane solution. It always tries to ensure that family links are maintained.

The ICRC does not have a position on the age up to which children should be detained with their parents in their best interests. In general the ICRC tries to ensure that the authorities avoid separating children from parents in detention. If they are separated, the ICRC aims to limit the harm caused to both parent and child by maintaining family contacts. Before considering removing a child from prison, the consequences of separating parent and child have to be carefully examined.

d) KEY POINTS

1. The situation of children detained with their mother is a complex and delicate issue. On the one hand, places of detention are not the ideal environment for a small child, but on the other hand, mother and child should not be separated just in order to provide the child with a “better” environment.
2. The age up to which children can be detained with their parents depends on national legislation or penitentiary rules.
3. Prior to any attempt to remove a child from the parent in prison, a thorough analysis should be carried out in order to identify the possible consequences of separating parent and child.

2. Mail

a) OVERVIEW OF PROBLEM

In situations of armed conflict family links are often severed, for a number of reasons: the distance separating family members; the prevailing security situation; the banning by the detaining authorities of all contact between detainees and their families or the imposition of bureaucratic restrictions; the disruption or breakdown of mail or telephone services; and the high cost of sending mail.

Persons detained and separated from their family members need to be able to maintain contact with them in order to minimize the mental anguish they and their families suffer as a result of this separation. The psychological benefits of maintaining

links between prisoners and their families on the outside are inestimable, irrespective of detainees' sex. Women – and men – must be able to send and receive mail to maintain or restore family links, and should be given assistance in overcoming obstacles to receiving family mail in order to preserve their psychological well-being and to make it easier for them to return to normal life on their release. Women in detention who lack literacy skills need help in writing to their families and reading the replies.

b) REVIEW OF INTERNATIONAL LAW

The rules relating to maintenance and restoration of family contacts (in particular with regard to correspondence, visits to places of detention and transfers) are set out in the previous chapter of this study (*Assessment of the needs of the civilian population with a focus on women*) as they are of equal relevance and importance to family members who are detained and to those who are not.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC asks the detaining authorities to allow detainees to restore and maintain family contacts. When no other suitable means are available, the ICRC endeavours to restore family links between prisoners and their families. This can include visits by the delegates to families to reassure them of the whereabouts of their detained relatives and to bring back news to the detainees. The ICRC also proposes the use of Red Cross messages. These must contain only personal family news and may be read and censored by the detaining authorities. Red Cross messages are generally exchanged through the network of the International Red Cross and Red Crescent Movement, which is coordinated by the ICRC.^[681]

In the event of the death of a detainee, the ICRC insists that the detaining authorities systematically notify his/her next of kin either directly or through an appropriate national or international organization.

d) KEY POINTS

1. Every effort should be made to ensure that family links are preserved during detention.
2. Detainees should be allowed to correspond with their families at regular intervals. When organizing mail services, appropriate assistance should be provided for the illiterate to exchange family news.
3. Women in detention frequently lack contact with their husbands detained in another prison. Particular attention should be paid to the exchange of family news between persons detained in different prisons and in different countries.

3. Family visits

a) OVERVIEW OF PROBLEM

Detained persons need to receive frequent visits from relatives in order to maintain family ties and preserve their psychological well-being, and also in certain contexts to receive vital material assistance. Indeed, in many cases family visits are the main source of supplies to supplement the scarce commodities provided by the detaining authorities. However, women often receive fewer family visits than men for various reasons. They might be ostracized by their families and communities after their arrest; they might be detained for “crimes of honour” and/or to protect them from their families or community. As they receive fewer family visits, female detainees also receive less material assistance. Lack of family contact can also compound any psychological and social problems.

During a family visit relatives may be allowed physical contact, and sometimes conjugal visits, or may be allowed to talk while remaining physically separated. Female detainees should be able to receive visits from their relatives in conditions that favour privacy but also preserve their dignity. Physical contact should be granted when detainees are visited by their children.^[682] Visits between detainees related to each other are also often difficult to arrange, especially visits between husband and wife when both are detained but in different prisons.

b) REVIEW OF INTERNATIONAL LAW

Refer to the section on *Maintenance of the family unit* in the previous chapter of the study.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC reminds the detaining authorities that detainees must be allowed to receive regular family visits and that these visits must take place in good conditions. The ICRC often acts as an intermediary between the families of detainees and the authorities in order to facilitate visits by family members to a relative detained in connection with an armed conflict. In several countries, the ICRC provides financial assistance, and/or organizes transport for the families to reach prisons, and/or helps families to obtain the necessary documentation. These activities may be carried out in cooperation with the National Red Cross or Red Crescent Society of the country concerned. In the case of prisoners of war, when family visits are not possible from one country to the other during the conflict, the ICRC will organize regular exchange of Red Cross messages.

d) **KEY POINTS**

1. Women in detention should have the possibility of receiving regular family visits that respect both their privacy and dignity. Special attention should be given to ensure proper visits take place between mother and child.
2. A person's family should be informed immediately of his/her detention and should be allowed to visit him/her rapidly.
3. Visits between detainees who are related to each other, especially husbands and wives, but detained in different locations, should be facilitated.

K. Educational, recreational and work programmes

a) OVERVIEW OF PROBLEM

Women should be able to take part in educational and recreational programmes during their detention as a means of maintaining their health and well-being, to relieve the monotony of daily prison life and to limit tension among detainees. As much time as possible should be spent in the open air each day.

In many countries work is part of detention life. It may be a potential source of income for detainees. Work programmes must take into consideration the physical specificities of women, especially pregnant women and nursing mothers. Women may be excused from participating in such programmes because they are caring for babies and children.

The ICRC has observed that women often lack access to recreational and educational programmes and income-generating projects, unlike male detainees in the same prisons. Furthermore, male detainees are often offered a wider variety of programmes than women, and have more opportunities to go outside the prison for external work programmes.

Illiterate women require literacy lessons in order to be able to communicate with family members and understand written prison regulations.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

International armed conflicts

The Third Geneva Convention requires the detaining authority to encourage the practice of intellectual, educational and recreational pursuits among prisoners of war, and to provide adequate premises and the necessary equipment for this.^[683] As stated in the section on *Conditions of detention – Accommodation* above, prisoners of war must also be given opportunities for physical exercise, including sports and games, and allowed to spend time out of doors. All camps must include sufficient open spaces for this purpose. Prisoners of war undergoing disciplinary punishment must also be allowed to exercise and to remain in the open air for at least two hours daily.^[684]

The Fourth Geneva Convention lays down virtually identical provisions for interned civilians. Additionally, with regard to education, it provides that all possible facilities must be granted to internees to continue their studies or take up new subjects.^[685]

The Convention also contains additional provisions relating to children and young people. It requires the Detaining Power to ensure their education and to allow them

to attend schools, either within the place of internment or outside. Finally, special playgrounds must be reserved in the place of detention for children and young people.^[686]

Individual and collective relief shipments for prisoners of war and civilian internees may include books and objects of an educational or recreational character, and, in the case of prisoners of war, also scientific equipment, examination papers, musical instruments, sports outfits and materials which allow prisoners of war to pursue their studies or cultural activities.^[687]

With regard to work, international humanitarian law permits detaining authorities to utilize the work of prisoners of war and, if they agree, of civilian internees. Account must be taken *inter alia* of age and sex. The Third and Fourth Geneva Conventions lay down detailed rules on the type of work that may be carried out, the conditions of work and remuneration; these go beyond the scope of the present study, which focuses on work that detainees may wish to do of their own accord and for their own benefit.^[688]

Non-international armed conflicts

Additional Protocol II deals only indirectly with the issue of education and recreation for persons deprived of their liberty. The provisions relating to education apply only to children, regardless of whether they have been deprived of their liberty, who are required to receive education in keeping with the wishes of their parents.^[689] With regard to education, the Protocol provides that persons deprived of their liberty are allowed to receive individual or collective relief, which should be taken as including books and other objects of an educational or recreational character.^[690]

With regard to work, the Protocol provides that, if made to work, persons deprived of their liberty for reasons related to the armed conflict must have the benefit of working conditions and safeguards similar to those enjoyed by the local population.^[691]

2) Human rights law

The Standard Minimum Rules for the Treatment of Prisoners provide that prisoners who are not employed in outdoor work must be granted at least one hour of suitable exercise in the open air a day, if the weather permits, and that young detainees and others of suitable age and fitness must receive physical and recreational training during the periods of exercise, for which purpose space, installations and equipment must be provided.^[692]

The Rules also provide that every place of detention must have a library for the use of all detainees, which must be stocked with both recreational and instructional books and which detainees must be encouraged to use.^[693]

There are a number of international rules and standards that regulate the work of all detainees – men, women and minors. These rules are mainly set out in the following legal texts: International Labour Organization Convention (No. 105) Concerning the Abolition of Forced Labour and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

These rules and standards emphasize the following: The work should not be of an afflictive nature but must be considered as a positive element of treatment; it must take into account the physical and mental fitness of the detainee as determined by a doctor; the organization and methods of work must be as nearly as possible like those used for similar work outside the prison, in particular as regards standards concerning the length of a normal working day, security, hygiene and rest (at least one day of rest per week); the work of detainees has to be equitably remunerated.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC verifies that working conditions are acceptable in terms of safety, health, difficulty and time spent at work. It recommends suitable measures to the authorities.

The ICRC may provide recreational and educational materials, such as tools and raw materials for handicrafts, books, writing materials and games, if such items are not made available by the detaining authorities. It may also help the detaining authorities to set up vegetable gardens in places of detention to improve the nutritional status of detainees.

d) KEY POINTS

1. Women should have access to recreational, educational and work programmes that are culturally and socially appropriate and conducted in suitable conditions.
2. Women detainees' health, dignity and well-being should not be undermined by working conditions. As much as possible, women and men should have the possibility of doing many different kinds of work, including income generating projects.
3. Pregnant women and nursing mothers should be exempted from mandatory work programmes and be offered recreational activities suitable to their condition.
4. The level of literacy of female detainees should be taken into consideration in the provision of educational and recreational activities.

L. Religious and cultural practices

a) OVERVIEW OF PROBLEM

Women should be able to practise their religion freely and have access to a place of worship and religious texts. They should also be able to follow their own specific cultural practices, such as wearing a head covering, caste separation, avoidance of certain

foods and observance of fasts. Authorities need to pay special attention to the respect of different religious rites in multi-religious contexts.

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

Under the Third and Fourth Geneva Conventions prisoners of war and civilian internees must be granted complete latitude in the exercise of their religious duties, including attendance at religious services of their faith, and Detaining Powers are required to provide adequate premises in which such services can be held. Detained ministers of religion must be allowed to minister to them freely.^[694]

In situations of non-international armed conflict, Additional Protocol II provides that all persons, regardless of whether their liberty has been restricted, are entitled to respect for their convictions and religious practices.^[695]

Individual and collective relief shipments for prisoners of war and civilian internees may include articles of a religious character.^[696]

2) Human rights law

Persons deprived of their liberty are entitled to freedom of religion to the same extent as persons not so deprived. Accordingly, the rules set out in the section on *Religious and cultural practices* of the previous chapter are also applicable to them.^[697]

The Standard Minimum Rules for the Protection of Prisoners provide that if a place of detention accommodates a sufficient number of people of the same religion, a qualified representative of that religion must be appointed and be allowed to hold regular services and pay private visits to the detainees. As far as practicable, detainees must be allowed to respect/fulfil the obligations of their religion by participating in services in the place of detention and by being provided with religious texts.^[698]

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC endeavours to ensure that detainees are able to practise their religion freely and to observe religious and cultural practices with dignity. At the request of detainees it provides religious books for distribution in places of detention.

d) KEY POINTS

1. All detainees should be allowed to observe their religious and cultural practices freely within the confines of the detention regime, and no-one should be coerced into observing such practices.

M. Personal documents

a) OVERVIEW OF PROBLEM

Detained women should be in possession of personal documents in their own names. In the chaos of armed conflict, people often lose their identity papers and have no means of proving who they are. In these circumstances they must be able to obtain new documents. If detainees' identity papers are removed on arrest or detention, they should be returned to them by the authorities.

b) REVIEW OF INTERNATIONAL LAW

The rules relating to personal documents and other forms of identification are set out in chapter II on *Assessment of the needs of civilian populations with a focus on women*. These rules are of equal relevance and importance to detained persons and their families.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC endeavours to determine and record the identity of all persons deprived of their freedom in connection with hostilities, and, in exceptional cases, of other detainees if it deems it necessary to do so for their protection.

The ICRC draws up, where necessary and at the detainee's own request, documents certifying that a detainee has been visited by the ICRC during the period of detention. These documents are often accepted by administrations and enable former captives or their families to receive compensation or State pensions under national legislation.

The ICRC also issues internationally recognized temporary travel documents to persons without documentation who need to travel, and in some countries helps detainees in their contacts with the authorities to obtain proper documentation.^[699]

d) KEY POINTS

1. The birth of a baby in a place of detention should be properly registered by the authorities of the country concerned, omitting the fact that the baby was born in a place of detention.
2. It should be ensured that female detainees and their children accompanying them in detention have appropriate documentation.

N. Judicial guarantees

a) OVERVIEW OF PROBLEM

Judicial guarantees or fair-trial rights are a set of principles and rules that aim to protect *inter alia* the life, physical and mental integrity, and liberty of individuals who are, or may be, subject to deprivation of liberty. Judicial guarantees take effect the moment a person has been deprived of his or her liberty and are applicable until the person is released. It should be noted that the fair-trial-rights provisions of international humanitarian law are non-derogable, like the rest of this body of law. Recognizing the extremely vulnerability to abuse of persons detained in situations of armed conflict, international humanitarian law provides that violations of the right to a fair trial may constitute grave breaches or serious violations of its provisions. International humanitarian law, like international human rights law, also aims to circumscribe the imposition and execution of the death penalty.^[700]

b) REVIEW OF INTERNATIONAL LAW

1) International humanitarian law

A non-exhaustive list of important judicial guarantees provided for in international humanitarian law is given below: the right to be judged by an independent and impartial court;^[701] the right to be promptly informed of the offences with which a person is charged;^[702] the rights and means of defence, such as the right to be assisted by a qualified lawyer chosen freely and by a competent interpreter, as well as the right to call witnesses;^[703] the principle of individual criminal responsibility;^[704] the principle of *nullum crimen sine lege* (i.e. no crime without law);^[705] the presumption of innocence;^[706] the right to be present at one's trial;^[707] the right not to testify against oneself or to confess guilt;^[708] the principle of *non bis in idem* (i.e. prohibition of double jeopardy);^[709] the right to have the judgement pronounced publicly;^[710] the right to appeal;^[711] the prohibition of passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.^[712]

The Third Geneva Convention contains detailed fair-trial rights for prisoners of war who may have violated the laws, regulations or orders of the Detaining Power but who, it should be remembered, cannot be tried for the sole fact of having taken part in the hostilities.^[713] The Convention specifically provides that a woman prisoner of war shall not be sentenced to a punishment more severe, nor treated more severely while undergoing punishment, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence. It also provides that a woman prisoner

of war may in no case be sentenced or treated more severely while undergoing punishment than a male member of the armed forces of the Detaining Power dealt with for the same offence.^[714] Depriving a prisoner of war of the rights of fair and regular trial is a grave breach of the Third Convention.^[715]

The Fourth Geneva Convention contains detailed provisions on fair trial-rights applicable to civilians, whether they be interned, or are detained for penal offences in occupied territory^[716], or interned or detained in the national territory of the Detaining Power.^[717] Similar to the Third Geneva Convention in relation to prisoners of war, the Fourth Geneva Convention provides that depriving a protected person (i.e. a civilian) of the rights of a fair and regular trial constitutes a grave breach of its provisions.^[718]

The judicial guarantees provisions of the Fourth Geneva Convention are supplemented by even more detailed rules laid down in Additional Protocol I under the heading “Fundamental Guarantees”.^[719] These guarantees apply to civilians who are in the power of a party to the conflict – including therefore its own nationals – who do not benefit from more favourable treatment under the Conventions or the Protocol and are affected by the armed conflict or occupation^[720] (e.g. nationals of States not parties to the Conventions, nationals of States not parties to the conflict, nationals of allied States, refugees and stateless persons, mercenaries, other persons deprived of prisoner-of-war status and protected persons subject to Article 5 of the Fourth Convention).

In addition to the judicial guarantees regime just outlined, which is applicable to civilians – including, of course, women – Additional Protocol I specifies that pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict shall have their cases considered with the utmost priority.^[721] It also provides that to the maximum extent feasible, the parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.^[722]

Judicial guarantees are an important part of international humanitarian law applicable in non-international armed conflicts as well. Article 3 common to the Geneva Conventions prohibits “the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples”.^[723] What constitutes such guarantees must be interpreted, taking into account both the fair-trial provisions of international humanitarian law and the provisions of international human rights law. It should be mentioned that violations of the judicial guarantees provisions of common Article 3 are listed as a war crime under the Rome Statute establishing a permanent International Criminal Court.^[724]

Additional Protocol II supplements common Article 3 by elaborating safeguards that must be applied in the prosecution and punishment of persons charged with criminal offences related to a non-international armed conflict.^[725] The Protocol *inter alia*

specifies that the death penalty shall not be carried out on pregnant women or mothers of young children.^[726]

2) Human rights law

It is impossible to attempt in the present study to outline the huge body of international human rights law pertaining to the right to a fair trial. Relevant rules have been developed at both the international level (International Covenant on Civil and Political Rights, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, International Convention on the Elimination of All Forms of Racial Discrimination) and regional levels (European, American and African human rights treaties), and are being interpreted on a daily basis by international, regional and national political bodies, courts, quasi-judicial institutions and other mechanisms.

A significant body of human rights standards pertaining to the administration of justice is also contained in non-treaty standards, such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles on the Role of Lawyers, to name just a few. It is the interplay between the fair-trial-rights provisions of international humanitarian law and human rights law that is important. While international humanitarian law was designed for application in the exceptional circumstances of armed conflict and can therefore never be derogated from, human rights law can be used to supplement or elaborate fair-trial standards contained in international humanitarian law where necessary, with a view to ensuring the widest possible protection of persons deprived of liberty in situations of armed conflict.

c) THE ICRC'S OPERATIONAL RESPONSE

The ICRC endeavours to monitor that the legal safeguards provided for in international humanitarian law are applied in relation to the arrest, detention and sentencing of persons detained in connection with an armed conflict.

It promotes respect for judicial guarantees by the relevant authorities and brings individual cases to their attention. It particularly stresses the suffering caused by the lack of implementation of basic fair-trial rights.

d) KEY POINTS

1. Judicial guarantees provided for by international humanitarian and human rights law and, in particular, their provisions relating to the protection of women, must be fully respected and applied by parties to an armed conflict.

2. The death penalty must not be carried out in contravention of provisions of international humanitarian and human rights law. In particular, the death penalty shall not be carried out on pregnant women or women with small children.

IV. Conclusions

THE ICRC has for many years expressed its concern about the plight of women in wartime – both those not taking part in the hostilities and combatants who are *hors de combat* because they are sick, wounded, shipwrecked or taken prisoner.

In 1998, it initiated a study with three principal objectives in mind: to identify the needs of women engendered by armed conflict, irrespective of whether those needs were the focus of ICRC activities ^[727]; to examine international law, particularly humanitarian law and to a lesser extent human rights law, in order to assess the degree to which they provide protection for women; and to draw up an overall picture of the ICRC's operational response to the needs of women affected by armed conflict. This study deliberately talks of “needs” and not “rights”, although in many instances the terms may be interchangeable. There are certain rights which have not been looked at, such as the right to nationality or statehood and the right to participate in political groupings, which could be explored further but did not find their place in this study. Instead, the focus was placed on issues such as physical safety, sexual violence, displacement, access to health care, food and shelter, and less talked-of matters like the problem of missing relatives and its impact on the survivors – mainly women – of armed conflict, and access to documentation.

It is also important to state that women in armed conflicts are not solely “victims” in need of assistance and protection. Attention has been paid in this study to the fact that women take part in armed conflicts as members of the regular armed forces or armed groups and in their support services. Women are also politicians, leaders of non-governmental organizations, social and political groups, and active participants in peace campaigns. As members of the civilian population, they have important and often crucial social and household economic roles and skills which enable them to deal with the increased stresses and burdens placed on them in wartime. For example, women have initiated small enterprises and income-generating projects with meagre resources within their devastated communities and within camps for the displaced. Women in wartime show tremendous courage and resilience as survivors and as heads of households – a role for which many of them have had little or no preparation for and which is made more difficult by the social constraints often imposed on them. The terms “vulnerable” and “victim” are not synonymous with “women”.

Traditional warfare – across national borders and involving regular armed forces – is still being waged, but today armed conflict takes place more often within a country. Such non-international armed conflicts become a struggle for control of territories or populations; and thus civilians are often placed at the heart of the conflict, endangered not only because of the proximity of the fighting but also because they are its main target. Civilians are often actively mobilized in the fighting or at least forced to choose sides. Those who succeed in keeping out of the fighting may be pressured to give support in the form of food or other material assistance. Yet few people support the notion of total conflict – whereby combatants should feel free to attack both combatants and civilians to weaken the enemy – as concluded in the recent ICRC *People on War* survey. ^[728]

It is accepted that there are limits to warfare, yet those limits are regularly breached. Civilian women are now increasingly at risk. War has shown that the safety of civilian women is not guaranteed by the respect due to their sex and gender. The thinking on women facing war leads us to a fundamental question: How can we secure respect for the distinction between civilians and combatants in tomorrow's wars in order to prevent the progressive widening of the scope of violence? Much more research needs to be carried out to answer this question, which is of not only a legal but also a political, historical and sociological nature. Finally, the purpose of this reflection is to try to ensure better protection for all.

It is important to note that in focusing specifically on the needs of women and not those of men, the study in no way intends to negate the particular needs of men and men's suffering in wartime or to infer that women *hors de combat* suffer more than their male counterparts. Indeed, it is not so easy to separate the impact of armed conflict on women from the impact of armed conflict on men, as they are members of the same families and communities, and the effects on the two groups are closely linked. In reaching this conclusion the ICRC is not backing away from a commitment to the needs of women in wartime, but reinforcing its commitment to a "gendered" approach through recognition that the impact of war on women is inextricably tied to the war waged by men – often their own menfolk – against other men – again often their own menfolk, and that men are often targeted through their women.

Turning to the question of whether the law addresses the needs of women in situations of armed conflict, the review carried out in the present study shows that on the whole – subject to the minor exceptions set out below – the law does adequately cover the needs of women in situations of armed conflict. But this is true only if one considers all the applicable bodies of law simultaneously, in particular international humanitarian law and human rights law.

The fact that the rules are found in different bodies of law is not negative *per se*, as it would not be appropriate for a single set of rules to attempt to regulate all the various aspects of armed conflict that affect women. Different bodies of law have different purposes. One of the principal aims of international humanitarian law is to regulate the conduct of hostilities. In so doing it offers important protection to women, both as persons taking an active part in the hostilities and as civilians. It would be inappropriate, however, to expect this body of law to regulate other issues which, although of relevance to women in situations of war as the present study has shown, are more suitably dealt with by human rights law and national law, such as personal documentation and the detailed regulation of property rights.

The law provides adequate protection in situations of both international and non-international armed conflict. Even though the written rules of international humanitarian law governing the latter situation are few in number, there is an important body of customary law which extends to non-international conflict the scope of application of many of the rules laid down for international armed conflict. That being said, the

principal rules affording protection to women in situations of armed conflict do form part of the written body of law applicable in non-international conflict.

There are, however, some gaps, the more substantive of which appear to relate to the issue of return after arbitrary displacement and the question of personal documents.

While at the normative level the needs of women in armed conflict are adequately addressed, the challenge lies in ensuring respect for and implementation of the existing rules.

With regard to the rules that aim to afford physical protection strictly speaking (e.g. the prohibitions on attacks against civilians, indiscriminate attacks and sexual violence), it would appear that violations stem from an unwillingness to comply with the rules rather than from ignorance of the law or the impossibility of respecting it.

Turning to the rules relating to assistance, a distinction must be drawn between the provision of assistance on the one hand by the party to the conflict in whose power the civilians find themselves, and on the other by external bodies, such as governmental cooperation agencies or humanitarian organizations. The failure of the relevant party to the conflict to respect the rules requiring it to provide assistance – and also certain of the rules relating to protection, such as minimum conditions of detention – is often due to the absence of funds and resources, making compliance impossible. Such situations obviously call for a different solution from cases of intentional violation.

In situations where the party to the conflict with primary responsibility for providing assistance is unable or unwilling to meet its obligations, outside agencies may step in by launching relief operations. In such cases, failure to provide the assistance required by law is principally due to the impossibility of gaining access to the population in need, either because of the refusal of the relevant party to the conflict to grant such access or because of threats to or attacks upon humanitarian personnel – both of which are violations of international humanitarian law. Negotiating access to those in need is a sensitive and crucial aspect of the provision of protection and assistance for victims of war, calling for dialogue with all parties to the conflict.

Another facet of the challenge of ensuring respect for the law lies in the fact that, although the legal provisions are clear, their application in practice may be difficult. This is particularly the case with regard to the principle of distinction. The law provides very clearly that hostilities may be directed only against persons taking an active part in hostilities. However, in today's non-international conflicts, determining what amounts to taking a direct part in hostilities is often far from easy.

A further difficulty in ensuring full respect for the rules protecting women in situations of armed conflict lies in the very nature of human rights law. As has been stated, human rights law offers important protection complementary to that afforded by international humanitarian law in a number of areas. The prevalent view to date has been that this body of law is binding only on States and not on armed opposition groups, so persons who find themselves in the power of such groups are unable to rely upon the provisions of human rights law to defend themselves against the latter. [729]

However, in practice this view is being challenged, and human rights are increasingly being referred to in such circumstances.

In addition to the existence of rules and the need to respect them, mechanisms for enforcing rights and redressing violations are also of crucial importance. In this respect, the recent developments – both at national and at international level – in the prosecution of those responsible for war crimes are a very important step forward in the fight against impunity, not only because the perpetrators are actually brought to justice, but also because of the general deterrent effect which it is hoped such developments will have.

Criminal prosecutions are only one of many methods for dealing with violations of international humanitarian law. Of considerable importance for victims of violations are mechanisms which permit them to obtain redress, which may include various forms of restitution as well as compensation. In this area too, important developments have taken place in recent years. Among these are pro-active and innovative positions adopted by national courts, the settlement of issues still outstanding from the Second World War through international claims processes, and creative mechanisms for addressing issues of immediate practical relevance to persons affected by armed conflict, such as the Land Claims Commissions in Bosnia-Herzegovina and Kosovo.

Unfortunately, these very promising developments need to be balanced against the reality that for many people affected by armed conflict recourse to national courts for assertion of their rights still remains an impossibility.

From a more operational point of view, what steps can the ICRC take to maximize the protection afforded by the law to women in situations of armed conflict? First and foremost, the continuation of its activities to make international humanitarian law better known by all parties involved in armed conflict and to monitor and ensure the respect for that law. Knowledge of the law is an obvious pre-requisite for such respect. In dissemination programmes emphasis should be placed on the two-tiered protection that humanitarian law offers women. And the ICRC should continue its present protection work, building on the knowledge it has acquired while carrying out studies and increasing its expertise in the area of problems related to sexual violence. Finally, it could enlist the support of men by raising their awareness of the specific problems of women, which they may not always recognize, through its communication activities and dialogue with the authorities.

The ICRC is providing assistance and protection for women affected by armed conflict or internal disturbances in countries throughout the world. Displaced women, detained women, women heading households made particularly vulnerable by the hostilities, women in need of protection from threats or violence, those searching for their missing relatives and those in need of medical, food and material assistance are seeking out – or being sought out by – the ICRC. Is this enough? Certainly it is important that the ICRC has recognized the general needs of women amongst all those in need of its activities and services. But it could enhance its response to specific needs.

For example, since this study was launched in 1998 the ICRC has realized that it could do more to curb sexual violence by means of more specific dissemination among

arms bearers on the prohibition of all forms of sexual violence, representations to those in a position to put an end to such violations, and activities for the (female or male) survivors of sexual violence. In particular, the ICRC needs to develop its existing expertise in protection activities for persons *hors de combat* in order to better address the needs of victims of sexual violence in all its forms. This action will include referring victims to other organizations which can provide appropriate assistance. The ICRC has already taken significant steps in this direction through evaluation of its training courses for new and existing personnel, the production of new dissemination materials relating specifically to sexual violence, and through the issue of instructions for an increased focus on this violation in dissemination activities for parties to armed conflict. Sexual violence is only one of the safety problems affecting women in situations of armed conflict. The ICRC is equally concerned about the other violations to which women are subjected – indiscriminate attacks, forced displacement, disappearances, etc.

In the context of its activities for women detained in connection with armed conflict or internal disturbances the ICRC has also provided guidance for delegates aimed at helping them to recognize issues specific to women in detention. This guidance is routinely given to ICRC delegates whose work encompasses visits to places of detention.

The ICRC's health and assistance activities have also been the subject of review. In particular, information outlining key aspects affecting women's access to health care and to food and material assistance was circulated to all ICRC delegations. Such information is also given systematically to all ICRC delegates carrying out activities in these domains. The ICRC will continue to do its utmost to respond to women's special needs in an effective way. This is an institutional priority for the ICRC and the subject of a specific pledge it made in 1999. [730]

Neither this study nor the pledge just mentioned alter the ICRC's "all victims" approach – to provide a comprehensive response to the needs of all populations affected by armed conflict. The aim of both is to reinforce this response through a better understanding of the needs and particular vulnerabilities of certain categories of victims, in this instance women. Maintaining the "all victims" approach is important so as to be in a position to come to the aid of whomever is amongst the most vulnerable, but the very notion of vulnerability necessitates an understanding of what makes people vulnerable, and this can differ according to whether the persons concerned are male, female, adults or children, and according to the particular circumstances in which they find themselves, such as detention or displacement. The special attention given to women through this study is helping the ICRC to increase that understanding, and to identify more precisely or more appropriately those members of the female population who are amongst the most vulnerable victims (or potential victims) of war.

Women and men have different roles and responsibilities in society which are socially and culturally determined, and consequently they also experience armed conflict in "gendered" ways. It is important to recognize these differences and to adapt responses and activities accordingly, while at the same time avoiding portrayal of

women solely as victims or vulnerable individuals and recognizing their traditional role as well as the fact that this role is changing in nature owing to armed conflict.

War - whether international or non-international - causes enormous suffering for those caught up in it. The present study aims to demonstrate that women experience war in a multitude of ways - from taking an active part as combatants to being targeted as members of the civilian population or because they are women. Women's experience of war is multifaceted - it means separation, the loss of family members and livelihood, an increased risk of sexual violence, wounding, deprivation and death. War forces women into unfamiliar roles and necessitates the strengthening of existing coping skills and the development of new ones. However, the general and specific protection to which women are entitled must become a reality. Constant efforts must be made to promote knowledge of and compliance with the obligations of international humanitarian law by as wide an audience as possible and using all available means. Everyone must be made responsible for improving the plight of women in times of war, and women themselves must be more closely involved in all the measures taken on their behalf.

Annex

Visits by the ICRC to detained persons in situations of internal violence

1. **Terms and conditions for the visits**

When a country is affected by a situation of internal violence, whether armed conflict or disturbances, the ICRC offers its services in order to carry out one of its traditional tasks which is to visit persons detained in connection with that situation. By visiting these persons, the ICRC wishes to ensure that they are treated humanely in all circumstances. It is thus concerned essentially with their material and psychological conditions of detention and with their treatment at all stages of their detention.

This request for access to detained persons implies that the ICRC wishes to be granted a number of facilities for its work in places of detention. The practical terms and conditions governing these visits are as follows:

a) ACCESS TO ALL PERSONS ARRESTED
AND DETAINED IN CONNECTION WITH SITUATIONS
OF INTERNAL VIOLENCE

This means that the ICRC delegates shall be allowed actual contact with all detainees whatever the status assigned to them by the authorities.

b) ACCESS TO ALL PLACES OF DETENTION WHERE THESE
PERSONS ARE HELD

This condition is the logical consequence of the first: the ICRC wishes to have access to all detainees concerned wherever they are held: prisons, camps, police stations, military barracks, etc. It also means that the ICRC wishes to have access to the entire premises of each place its delegates visit.

c) PERMISSION TO SPEAK FREELY AND IN PRIVATE
WITH ALL DETAINEES

The delegates must have the opportunity to speak freely and in private with the detainees of their choice, in a place of their choice and, within reasonable limits, without restriction of time. Without such interviews, the ICRC cannot make proper assessments.

d) AUTHORIZATION TO REPEAT VISITS

Experience has shown that one single visit has few positive effects in the long term and does not allow for either sustained protection activities or a constructive dialogue with the detaining authorities. The frequency of such visits is determined by the ICRC after consultation with the authorities.

e) HANDING OVER BY THE DETAINING AUTHORITIES
OF A LIST OF DETAINEES AND/OR AUTHORIZATION
TO DRAW UP SUCH A LIST DURING THE VISIT

This enables the ICRC to identify the persons it visits and to follow their cases for as long as they are detained.

In the event of further arrests, the authorities should notify the ICRC of the names of the persons arrested and of their place of detention. The ICRC should also be notified of all transfers and releases.

f) AUTHORIZATION TO PROVIDE MATERIAL ASSISTANCE
TO THE DETAINEES, IF NECESSARY

In such cases, all relief supplies proposed by the ICRC are submitted to the authorities for approval.

g) ALLOWING DETAINEES TO SEND NEWS
TO THEIR RELATIVES

As a principle, detainees should be allowed to send family news to their next of kin. The ICRC gives detainees the opportunity to correspond with their families by means of Red Cross messages.

2. **Conduct of the visit**

a) SIZE AND COMPOSITION OF ICRC VISITING TEAMS

The size of the team of ICRC delegates visiting a place of detention depends on the number of detainees and on the prevailing conditions of detention. Therefore, the ICRC team may include doctors, nurses, a sanitary engineer or a nutritionist.

b) DURATION AND REPETITION OF ICRC VISIT

The frequency and the duration of visits, which may last from one to several days, depend on the number of detainees held and on the seriousness of the problems encountered.

c) PATTERN OF ICRC VISIT

An ICRC visit usually follows the same pattern in all places of detention. This is described below:

- Initial interview with the authorities in charge of the place of detention.
- Visit of all premises in the place of detention.
- Interviews in private with the detainees
- Final interview with the authorities in charge of the place of detention.

d) DIALOGUE AND REPORTING

The ICRC submits reports on its findings to the competent authorities. Its recommendations are intended to encourage the authorities to take measures that will bring conditions of detention and treatment up to recognized standards. The competent authorities and the ICRC undertake to open and maintain a dialogue on questions of humanitarian concern raised in the ICRC reports, with a view to using the recommendations contained therein to reform policies.

In order to protect the dialogue and the working relationship between the ICRC and the authorities, the reports are considered confidential by both the ICRC and the authorities.

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Website: www.icrc.org/eng/women

Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACORD	Agency for Cooperation and Research in Development
AP	Additional Protocol
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CCW	Convention on Conventional Weapons
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EXCOM	Executive Committee of the UNHCR
FMLN	Farabundo Marti National Liberation Front
GC	Geneva Convention(s)
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMPD	International Centre for Migration Policy Development
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced person
IHL	International humanitarian law
IRRC	International Review of the Red Cross

NGO	Non-governmental organization
OAU	Organization of African Unity
ODI	Overseas Development Institute (UK) (now DFID: Department for International Development)
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
POW	Prisoner of War
PTSD	Post-Traumatic Stress Disorder
RCM	Red Cross message
TRC	Truth and Reconciliation Commission of South Africa
TVE	Television for the Environment
UN	United Nations
UNCHS	United Nations Centre for Human Settlement
UNDAW	United Nations Division for the Advancement of Women
UNFPA	United Nations Population Fund
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
USAID	United States Agency for International Development
v.	versus
WMA	World Medical Association
WFP	World Food Programme
WHO	World Health Organization

Notes

- [1] The International Red Cross and Red Crescent Movement is composed of the International Committee of the Red Cross (ICRC), National Red Cross and Red Crescent Societies and the International Federation of Red Cross and Red Crescent Societies (International Federation), hereinafter referred to as the Movement.
- [2] See Resolutions of the 26th International Conference of the Red Cross and Red Crescent, Geneva, 1995, *International Review of the Red Cross*, January-February 1996, No. 310, pp. 9-10. Resolutions specifically relating to women were agreed upon by members of the International Conference, States party to the Geneva Conventions and members of the International Red Cross and Red Crescent Movement.
- [3] See Resolution 1 of the 27th International Conference of the Red Cross and Red Crescent, Geneva, 1999, *International Review of the Red Cross*, December 1999, No. 836, p. 878.
- [4] See ICRC pledge statement: "To promote respect for women in situations of armed conflict", Nov. 1999, reported in full on Website www.icrc.org/eng/women.
- [5] See ICRC Website report "Widowhood and armed conflict: challenges faced and strategies forward", Nov. 1999. For full text of report and list of participants in this workshop, coorganized by the ICRC and the Australian Red Cross, see Web site www.icrc.org/eng/women.
- [6] The Beijing Conference aimed "to advance the goals of equality, development and peace for all women everywhere in the interest of humanity." See Platform for Action and the Beijing Declaration, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, p.7. United Nations Department of Public Information, 1996.
- [7] Beijing +5 was an extraordinary session of the General Assembly, entitled "Women in the Year 2000: equality between the sexes, development and peace for the XXIst century". This meeting aimed to examine and evaluate the progress accomplished in the "implementation of the Platform for Action, focusing particularly on positive actions, lessons learned, obstacles, key challenges remaining and a vision for gender equality in the next millennium." Resolution adopted by the UN General Assembly, 52nd session, agenda item 106.A/RES/52/231, 17 June 1998, point 6.
- [8] Commission on the Status of Women, Forty-second session, 2-13 March 1998, Thematic issues before the Commission on the Status of Women, Report of the Secretary-General, p. 9.
- [9] Para. 135, Platform for Action and the Beijing Declaration, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, p. 84. United Nations Department of Public Information, 1996.
- [10] United Nations Security Council Resolution 1325: "Women and Peace and Security", 31 October 2000, S/RES/1325 (2000). See in particular point 16.
- [11] The term "gender mainstreaming" refers to: "the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes,

- in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality" (ECOSOC, UN Doc. E/CN.4/1996/105, para. 13).
- [12] Policy Statement for the Integration of a Gender Perspective in Humanitarian Assistance, Inter-Agency Standing Committee (IASC), 31 May 1999.
- [13] *Ibid.* Background/Facts.
- [14] Civilians, wounded, sick, shipwrecked and captured combatants.
- [15] Article 3 common to the four Geneva Conventions of 1949 applies to conflicts not of an international character, i.e. armed conflicts between a government and an armed opposition group or armed conflicts between two or more armed opposition groups. In 1977, an Additional Protocol was adopted to develop and supplement Article 3. However, this Protocol only applies to conflict between a government and an armed opposition group which is under responsible command and controls some territory
- [16] In August 1999 the UN Secretary-General issued a Bulletin on "Observance by United Nations forces of international humanitarian law". This identified fundamental principles and rules of international humanitarian law applicable to UN forces conducting operations under UN command and control and recalled that, in addition to these principles, such military personnel remained bound by national laws on the subject. (UN Doc. ST/SGB/1999/13, *Secretary-General's Bulletin, Observance by United Nations Forces of International Humanitarian Law*, 6 August 1999).
- [17] First Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, 1949 (GC I); Second Geneva Convention for the Amelioration of the Condition of Wounded, and Shipwrecked Members of Armed Forces at Sea, 1949 (GC II); Third Geneva Convention relative to the Treatment of Prisoners of War, 1949 (GC III) and Fourth Geneva Convention relative to the Treatment of Civilian Persons in Time of War, 1949 (GC IV).
- [18] Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977 (AP I) and Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1977 (AP II).
- [19] Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 1980 (the Convention on Conventional Weapons); Protocol I on Non-Detectable Fragments, 1980; Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, 1980, as amended in 1996; Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons, 1980, and Protocol IV on Blinding Laser Weapons, 1995; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction, 1997 (the Anti-personnel Mines Convention). See also the Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of

Warfare, 1925 (the 1925 Gas Protocol); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972; Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1976; and Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993 (the 1993 Chemical Weapons Convention). Finally, also of great importance to the enforcement of international humanitarian law is the Statute of the International Criminal Court adopted in 1998.

- [20] The “grave breaches” provisions of the four Geneva Conventions (Articles 50/51/130/147 GCs) and Article 85 AP I identify the rules whose violations States are under a duty to prosecute or extradite. The 1998 Statute of the International Criminal Court is the most recent codification of violations of international humanitarian law for which there is international criminal responsibility. For the sake of simplicity, the study will principally refer to crimes under this Statute. Furthermore, although reference will be made only to violations which are war crimes, it should not be forgotten that individuals can also be held criminally responsible for crimes against humanity and genocide.
- [21] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY) was established by Security Council Resolution 827 of 25 May 1993. (Its Statute was originally published as an Annex to the Report of the Secretary-General pursuant to para. 2 of Security Council Resolution 808 (1993), UN Doc. S/25704 (1993). The International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (ICTR), was established by Security Council Resolution 955 of 8 November 1994.
- [22] Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998, UN Doc. PCNICC/1999/INF/3, 17 August 1999.
- [23] Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, UN Doc., S/2000/915, October 2000, and letter dated 12 July 2001 from the Secretary-General addressed to the President of the Security Council, S/2001/693.
- [24] Articles 12 GC I and GC II. That women are to be afforded equal protection to men is expressly spelled out in GC III, Article 14, which provides that “women shall (...) in all cases benefit by treatment as favourable as that granted to men”. Non-discrimination provisions are also set out in common Article 3 GCs; Articles 88 (2) and (3) GC III; Articles 27 and 98 GC IV; Articles 9 and 75 AP I and Articles 2 and 4 AP II.
- [25] Although long-established, the principle of distinction is reaffirmed in Article 48 AP I, which provides: “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives”.

- [26] This too is a long-standing principle which finds expression in Article 51 AP I in the following terms:
4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:
- a) those which are not directed at a specific military objective;
 - b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
 - c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;
- and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.
5. Among others, the following types of attacks are to be considered as indiscriminate:
- a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
 - b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”
- [27] Article 54(1) AP I.
- [28] Article 54(2) AP I.
- [29] Article 57 AP I. Of particular relevance is paragraph 2(a)(ii), which requires those who plan or decide upon an attack to: “refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” It should be noted that the term “attacks” means acts of violence against the adversary, whether in offence or in defence (Article 49(1) AP I).
- [30] Article 56 AP I.
- [31] Article 55 AP I.
- [32] Article 51(7) AP I.
- [33] Article 51(6) AP I.
- [34] Articles 13–15 AP II.
- [35] Article 51(4)(c) AP I.
- [36] 1997 Anti-personnel Mines Convention.
- [37] Protocol on Prohibitions and Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, to the 1980 Convention on Conventional Weapons. While the use of anti-personnel mines is categorically prohibited by the 1997 Anti-personnel Mines Convention, this Protocol merely restricts the use of mines, booby-traps and other devices. It is important to note, however, that it prohibits outright the indiscriminate use of the weapons in question and defines as indiscriminate *inter alia* “any placement of such weapons which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination

thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” (Article 3 (8) (c)).

- [38] Articles 25(4), 29(2) and 108 GC III.
- [39] Articles 16, 89 and 14 GC IV respectively. See also Article 38 GC IV which requires that pregnant women and mothers of children under seven years who are aliens in the territory of a party to a conflict must benefit from “preferential treatment” to the same extent as nationals of the State concerned. See also Articles 17, 18(1), 21, 22(1), 23(1), 50(5), 91(2), 132(2) GC IV and Article 76(2) AP I.
- [40] Articles 85 and 97 GC IV. See also Article 124(3) GC IV and Article 75(5) AP I.
- [41] The public emergency must threaten the life of the nation and the derogations must comply with certain conditions: they must be proportional to the crisis at hand; they cannot be introduced on a discriminatory basis; and they must not contravene other rules of international law, including international humanitarian law. Additionally, states making such derogations are required to make a declaration informing those responsible for the implementation of the human rights instrument of the measures that have been suspended and of the reasons therefor (Article 4, 1966 International Covenant on Civil and Political Rights (ICCPR); Article 15, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 27, 1969 American Convention on Human Rights (ACHR).
- [42] These instruments include the ICCPR, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the ECHR and its protocols, the ACHR and its protocols, the 1981 African Charter on Human and Peoples’ Rights (ACHPR), the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1984 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the 1989 Convention on Rights of the Child.
- [43] The principal international instruments for the protection of refugees are the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Mention should also be made of the non-binding Cartagena Declaration on Refugees of 1984.
- [44] Female combatant, ICRC *People on War* project, Georgia, 1999. The *People on War Report: ICRC Worldwide Consultation on the Rules of War*, ICRC, Geneva, 1999 (available on request from the ICRC, Geneva, Website www.onwar.org). To mark the 50th anniversary of the 1949 Geneva Conventions the ICRC launched a consultation in 17 countries, 12 of which were or had been at war, giving the general public a chance to express their opinions on war. The aim of this consultation was to reveal how civilians and the military view their experience of war, what basic rules they expect to apply in war, why these rules sometimes fail and what expectations are for the future.
- [45] KRILL, Françoise, ICRC, “The protection of women in international humanitarian law”, *International Review of the Red Cross*, No. 249, November–December 1985, pp. 337–363.
- [46] SIEGLE, Greg, “Women critical to success of US all-volunteer force”, *Jane’s Defence Weekly*, June 1999, Vol. 31, No. 25, p. 24.

- [47] BYRNE, B., Gender, Conflict and Development, BRIDGE briefings on Development and Gender, Ministry of Foreign Affairs, Netherlands, 1996, p. 18.
- [48] Women and armed conflicts, Study for the Norwegian Ministry of Foreign Affairs, Norwegian Institute of International Affairs, 1999, p. 19.
- [49] GUNARATNA, Dr Rohan, "Suicide terrorism: A global threat", *Jane's Intelligence Review*, April 2000, p. 53.
- [50] BYRNE, B., Gender, Conflict and Development, BRIDGE briefings on Development and Gender, Ministry of Foreign Affairs, Netherlands, 1996, p. 14.
- [51] *Ibid.*, page 14.
- [52] *Ibid.*, p. 18.
- [53] ICRC *People on War* project, 1999.
- [54] *Ibid.*
- [55] *Ibid.*, Country report Bosnia-Herzegovina, 1999, p. 19.
- [56] 1868 St Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight. Also of relevance are the 1907 Declaration concerning Expanding Bullets, the 1925 Geneva Gas Protocol, the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and the 1997 Anti-personnel Mines Convention.
- [57] Articles 35 and 36 AP I.
- [58] Articles 41–42, 40 and 37 AP I respectively. In many cases violation of these rules is considered a war crime under the ICC Statute. See, for example, Articles 8(2)(b)(vi), (vii), (xi), (xii) and (xvii), ICC Statute with regard to international armed conflicts and Articles 8(2)(e)(ix), ICC Statute with regard to non-international armed conflicts.
- [59] The First Geneva Convention relates to wounded and sick in armed forces in the field, the Second Geneva Convention relates to wounded, sick and shipwrecked members of the armed forces at sea and the Third Geneva Convention relates to prisoners of war. See Article 12 GC I, Article 12 GC II and Article 14 GC III.
- [60] For example, Article 14 GC III provides that female prisoners of war "shall in all cases benefit by treatment as favourable as that granted to men". The Third Geneva Convention contains numerous other provisions aimed at ensuring equality of treatment and meeting the specific needs of women. They include the requirement that women be accommodated in separate dormitories from men (Article 25(4)); that they be provided with separate sanitary facilities (Article 29(2)); and that, if undergoing penal and disciplinary punishments, they be held in quarters separate from men and under the immediate supervision of women (Articles 97 and 108). Similar requirements are laid down in Article 75(5) AP I and Article 5(2)(a) AP II; Article 88 GC III prohibits imposing on women more severe penal or disciplinary punishment or treatment than male or female members of the armed forces of the Detaining Power.
- [61] Article 43 AP I. See also Article 4 GC III and Article 1 Hague Regulations 1907.
- [62] Article 13(3) AP II.
- [63] Article 50(1) AP I.
- [64] Women in Black is a form of protest by women against war. Women in Black groups

have sprung up in many countries around the world but there is no organizational link between them. Women dress in black and stand silently in public places in peaceful protest against war. For further reading on women and peace see COCKBURN, C., *The Space Between Us: Negotiating Gender and National Identities in Conflict*, Zed Books, London and New York, 1998.

- [65] See ICRC publication, *Spared from the Spear: Traditional Somali Behaviour in Warfare*, February 1997, p. 59.
- [66] [In order to erase the blood].
- [67] Women Building Peace: From the Village Council to the Negotiating Table. International Alert campaign brochure, June 2000.
- [68] United Nations Beijing Platform for Action, Publication of Department of Public Information, New York, 1996, p. 83, para. 134.
- [69] The fall of Srebrenica (in Bosnia-Herzegovina) saw the separation of Muslim men from women and young children. The majority of women and children were moved out of the area and the men were detained or reportedly fled. During the months that followed, the ICRC collected the names of persons unaccounted for. In February 1996, the ICRC made its conclusions public for the first time: that the vast majority of the missing men had been killed after capture and that many others had been killed in armed confrontations while fleeing the enclave or in lieu of arrest. As many as 7,300 people were reported as still missing by ICRC to the highest authorities in 1996. ICRC Special Report: *The issue of missing persons in Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia*, February 1998.
- [70] ICRC/TVE film, "Women and War: At the end of a gun", May 2000. Comments of a doctor working with Save the Children Fund (SCF).
- [71] This can also come at a price for women who are seen to be going outside their culturally assigned roles.
- [72] ICRC information gathered by the author from delegates in the course of the research.
- [73] ICRC *People on War* radio series: "Women on War", March 2000.
- [74] ICRC information gathered by the author from delegates in the course of the research.
- [75] A workshop on widowhood was organized by the ICRC and the Australian Red Cross at the 27th International Conference of the Red Cross and Red Crescent in November 1999. Further information on this workshop can be found on the ICRC Website: www.icrc.org/eng/women.
- [76] A 1998 internal review process aimed at identifying current and future challenges facing the ICRC and determining how these should be addressed. See International Committee of the Red Cross, "Avenir" Study: Strategic content, Geneva, 12 December 1997, *International Review of the Red Cross*, March 1998, No 322, pp.127-136.
- [77] This initiative was taken up in Resolution 1 of the 27th International Conference, as outlined above.
- [78] The period of this study was primarily January 1998 - December 1999, but it also includes an overview of activities in 2000.

- [79] The ICRC deliberately uses the word “victims” and not the word “survivors”. This reflects the fact that not all victims survive armed conflict and not all survivors are victims.
- [80] See in particular *Children Affected by Armed Conflict, 1995-99*, Report of the ICRC and the International Federation to the Council of Delegates, Geneva, August 1999, p. 5.
- [81] See in particular, MACHEL, Graça, Expert of the Secretary-General, “The impact of armed conflict on children”, Report to the 51st Session of the UN General Assembly, 1996, adopted by the General Assembly, A/RES/48/157; and OUATTARA, M., SEN, P., THOMSON, M., “Forced marriage, forced sex: The perils of childhood for girls”, *Gender and Development*, November 1998, Vol. 6, No. 3, pp. 27-33.
- [82] LORETTI, A., “Armed conflicts, health and health services in Africa: An epidemiological framework of reference”, in World Health Organization (WHO), *Medicine, Conflict and Survival*, 1997, Vol. 13, p. 221.
- [83] See Resolution 1, point 6, 27th International Conference of the Red Cross and Red Crescent, Geneva 1999, *International Review of the Red Cross*, December 1999, No. 836, p. 878.
- [84] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000.
- [85] International Red Cross and Red Crescent Movement, Plan of Action Concerning Children in Armed Conflict, 1995. See also ICRC brochure *Children and War*, 1997.
- [86] BENJAMIN, J., FANCY, K., *The Gender Dimensions of Internal Displacement: Concept Paper and Annotated Bibliography*, Women’s Commission for Refugee Women and Children/UNICEF, New York, 1998, p. 10.
- [87] WHITTINGTON, S., UNICEF, “Gender: an introduction”, presentation at the Inter-Agency Standing Committee, Sub-Working Group on gender and humanitarian assistance, workshop on integration of gender into needs assessment and planning of humanitarian assistance, Chavannes-de-Bogis, Switzerland, 26-30 July 1999.
- [88] *Ibid.*
- [89] Gender Glossary, World Food Programme, p. 23 (no date).
- [90] WHITTINGTON, S., UNICEF, “Gender: an introduction”, presentation at the Inter-Agency Standing Committee, Sub-Working Group on gender and humanitarian assistance, workshop on integration of gender into needs assessment and planning of humanitarian assistance, Chavannes-de-Bogis, Switzerland, 26-30 July 1999.
- [91] “Honour crimes” is the term used in many countries to describe the reasons for the detention of women accused of behaviour which is perceived by law or custom as not acceptable or appropriate. A crime of honour can also mean the killing of a woman by her father or brother for engaging in, or being suspected of engaging in, sexual practices before or outside marriage. ODEH, L.A., “Crimes of honour and the construction of gender in Arab societies”, in YAMANI, M. (ed.), *Feminism and Islam: Legal and Literary Perspectives*, Ithaca press, 1996, pp. 141-194.
- [92] The ICRC has so far received 7,482 tracing requests from the families of people reported missing in Srebrenica, of which 7,435 are for men and 47 for women.
- [93] *The People on War Report*, 1999.

- [94] Article 59 GC IV, Article 70(1) AP I and Article 18 AP II.
- [95] Article 70(2) AP I and Article 59 GC IV.
- [96] Article 30 GC IV.
- [97] PICTET, J., *Commentary on the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 1958, p. 214.
- [98] Article 142 GC IV.
- [99] Article 143 GC IV.
- [100] The question of detention is dealt with in the next chapter.
- [101] In fulfilling its mandate from the 26th International Conference of the Red Cross and Red Crescent the ICRC has, since 1996, attempted to distil its experience on the effects of arms availability on civilian populations by a variety of methods. It has carried out two case studies on the issue. See *Arms Availability and the Situation of Civilians in Armed Conflict: A study by the International Committee of the Red Cross*, Geneva, June 1999.
- [102] TURSHEN, M., “Women’s war stories”, in TURSHEN, M., TWAGIRAMARIYA, C. (eds), *What Women Do in Wartime: Gender and Conflict in Africa*, Zed Books, London & New York, 1998, p. 7.
- [103] ELLIDGE, S., “Casualties of war”, *Marie-Claire UK*, August 2000, p. 28.
- [104] Families may offset this vulnerability or the potential risk for their daughters by arranging early marriages for them (often circumventing tradition and custom by, for example, reducing the dowry or brideprice) in an effort to marry them quickly to offer them protection. Or families may choose to send their young daughters away to relatives in areas less affected by fighting as a means of protecting them from sexual violence by members of the armed forces.
- [105] See also section on *Personal documentation*.
- [106] BYRNE, B., *Gender, Conflict and Development*, *BRIDGE Briefings on Development and Gender*, Ministry of Foreign Affairs, Netherlands, 1996, p. 26.
- [107] KUMAR, K., *Women and Women’s Organizations In Post-Conflict Societies: the Role of International Assistance*, USAID Programme and Operations Assessment Report, December 2000, No. 28.
- [108] Articles 48 and 51 AP I. Also of relevance is the prohibition in Article 51(2) API on acts or threats of violence whose primary purpose is to spread terror among the civilian population.
- [109] Article 51(4) and (5) AP I.
- [110] Article 57 AP I. Of particular relevance is paragraph 2(a)(ii), which requires those who plan or decide an attack to “refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.
- [111] Article 56 AP I. Although this provision speaks of “attacks”, Article 49(1) AP I provides that “‘attacks’ mean acts of violence against the adversary, whether in offence or in defence”.
- [112] Article 51(6) AP I.
- [113] Article 54 AP I.

- [114] Article 51(7) AP I. Reference should also be made to those provisions of the Fourth Geneva Convention which attempt to shield the civilian population from the effects of hostilities by enabling parties to a conflict to establish what are known as “safety zones” (Articles 14 and 15 GC IV).
- [115] Articles 13-15 AP II.
- [116] Article 5(2), 1997 Anti-personnel Mines Convention.
- [117] Article 85(3) AP I provides in part that:
 “the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:
 (a) making the civilian population or individual civilians the object of attack;
 (b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
 (c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects.”
- [118] The following acts are defined as war crimes in the Statute of the ICC:
 “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” (Articles 8(2)(b)(i) and 8(2)(e)(i));
 “intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or civilian objects which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” (Article 8(2)(b)(iv));
 “employing poison or poisoned weapons” (Article 8(2)(b)(xvii));
 “employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices” (Article 8(2)(b)(xviii));
 “employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute” (Article 8(2)(b)(xx));
 “utilizing the presence of civilians to render certain points, areas or military forces immune from military operations” (Article 8(2)(b)(xxiii));
 “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions” (Article 8(2)(b)(xxv)).
 The first type of conduct will constitute a war crime whether committed in international or non-international armed conflict, while the remainder are war crimes only if committed in international armed conflicts.
- [119] See for example, common Article 3 GCs, Article 75 AP I and Articles 4 and 5 AP II.
- [120] Similar “humane treatment” provisions exist in the three other Geneva Conventions in

relation to the specific category of persons protected by each Convention (Articles 12 GCs I and II and Article 13 GC III). With regard to the Fourth Geneva Convention, it should be pointed out that despite its apparently very broad title, most provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War do not in fact protect the entirety of the civilian population. Instead, its guarantees are only available to “protected persons” as defined in the Convention. In simple terms, protected persons are those who in a situation of conflict or occupation find themselves in the hands of a power of which they are not nationals (Article 4 GC IV). There are number of exceptions to this simplified definition. For example, nationals of a State that is not bound by GC IV are not protected persons, and neither are nationals of a neutral State or of a co-belligerent State as long as their State of nationality retains normal diplomatic relations with the State in whose power they find themselves. Furthermore, persons protected by the other three Geneva Conventions are also not considered protected persons under GC IV. This means that although the inhabitants of an occupied territory are protected by the Convention, as are foreign nationals either in an occupied territory or in a State party to the conflict, the Convention offers no protection to civilians against the acts of their own state of nationality. (Part II of GC IV is broader in scope and applies to the whole population of the states in conflict.)

[121] Article 31 GC IV.

[122] Article 33 GC IV.

[123] Article 34 GC IV. A number of other provisions ensure personal safety in practice even if they appear in the sections of the Convention which deal with other issues. They include the principle of non-refoulement (Article 45) and the prohibition on the imposition of the death penalty on persons who were under eighteen years of age at time of the offence (Article 68).

[124] The expression “who are in the power of a party to the conflict” arguably extends the protections to civilians as against their own government.

[125] Article 4 AP II provides that:

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) collective punishments;

(c) taking of hostages;

(d) acts of terrorism;

- (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
 - (f) slavery and the slave trade in all their forms;
 - (g) pillage;
 - (h) threats to commit any or the foregoing acts.
- [126] Articles 50/51/130/147 GCs all include wilful killing, torture or inhuman treatment, including biological experiments, and wilfully causing great suffering or serious injury to body or health among their lists of grave breaches.
- [127] In addition to the grave breaches of the Geneva Conventions the following acts are war crimes under the ICC Statute:
- killing or wounding treacherously individuals belonging to the hostile nation or army (Article 8(2)(b)(xi))
 - committing outrages upon personal dignity, in particular humiliating and degrading treatment (Article 8(2)(b)(xxi))
 - committing rape, sexual slavery, enforced prostitution, forced pregnancy (...) enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions (Article 8(2)(b)(xxii))
- when committed in conflicts of an international nature; and
- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture (Article 8(2)(c)(i))
 - committing outrages upon personal dignity, in particular humiliating and degrading treatment (Article 8(2)(c)(ii))
 - taking of hostages (Article 8(2)(c)(iii))
 - the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable (Article 8(2)(c)(iv))
- when committed in armed conflicts not of an international nature.
- [128] Article 6 ICCPR, Article 2 ECHR, Article 4 ACHR and Article 4 ACHPR.
- [129] Article 7 ICCPR, Article 3 ECHR, Article 5 ACHR, Articles 4 and 5 ACHPR.
- [130] They include Protocol No.6 to the 1983 ECHR; the Second Optional Protocol of 1989 to the ICCPR and the Protocol of 1990 to the ACHR.
- [131] Article 2(1), Protocol to the ACHR to abolish the death penalty, 1990; Article 2 Second Optional Protocol to the ICCPR, aimed at abolishing the death penalty, 1989; Article 2 Protocol No. 6 to the ECHR concerning the abolition of the death penalty, 1983.
- [132] Article 2(2), 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 5, 1985 Inter-American Convention to Prevent and Punish Torture. It is important to note that both torture Conventions state that the prohibition on torture is absolute and no exceptional circumstances whatsoever, expressly including a state of war, a threat of war, or any public emergency, may be invoked as a justification for acts of torture. Reference should also be made to the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which established the European Committee for the Prevention of Torture

and Inhuman or Degrading Treatment or Punishment. This Committee, by means of visits, examines the treatment of persons deprived of their liberty with a view, if necessary, to strengthen the protection of such persons from torture and inhuman or degrading treatment or punishment. This preventive activity, complementary in certain ways to the ICRC's visits to persons in detention, is an important addition to the existing human rights implementation and supervisory mechanisms, which for the most part tend to be *post facto*.

- [133] Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979.
- [134] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
- [135] Article 1, 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.
- [136] *Ibid.*, Articles 2 and 3.
- [137] *Ibid.*, Article 4.
- [138] Declaration on the Elimination of Violence Against Women, adopted by UN General Assembly resolution 48/104 of 20 December 1993.
- [139] Declaration on the Protection of Women and Children in Emergency and Armed Conflict, adopted by UN General Assembly resolution 3318 (XXIX) of 14 December 1974.
- [140] *Ibid.*, Articles 1 to 6.
- [141] See, for example, the 1951 Convention relating to the Status of Refugees, Article 1 A(2) of which provides that: "For the purposes of the present Convention, the term 'refugee' shall apply to any person who: (...) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country". See also Article 1(1) of 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and Conclusion 3 of the 1984 Declaration of Cartagena on Refugees.
- [142] Article 1(2), OAU Convention and Conclusion 3 of the 1984 Declaration of Cartagena.
- [143] In 1995 UNHCR's Executive Committee called upon the High Commissioner for Refugees to support and promote efforts by States towards the development and implementation of guidelines and criteria in response to persecution specifically aimed at women, recognizing as refugees women whose claim to refugee status was based on a well-founded fear of persecution within the meaning of the 1951 Convention, including through sexual violence or gender-related persecution. (UN Doc A/AC.96/878, 11 October 1996, Report of the Forty-Seventh Session of the Executive Committee of the High Commissioner's Programme, Geneva, 7-11 October 1996). Australia, Canada and the US have adopted such guidelines. See also *Guidelines on Gender Issues for Decision-Makers*, Australian Department of Immigration and Multi-Cultural Affairs, July 1996; *Guidelines on Women Refugee Claimants Fearing Gender-related Persecution*, Canadian Immigration and Refugee Board, 9 March 1993, update November 1996; *Considerations for*

Asylum Officers Adjudicating Asylum Claims from Women, US Immigration and Naturalization Service, 26 May 1995.

- [144] Matter of M.K.; Office of the Immigration Judge, Executive Office for Immigration Review, A 72-324-558, 9 August 1995. The court referred to the Declaration of Violence against Women, which specifically condemns battering as a serious violation of human rights, to define persecution, as well as to the ICCPR. Similar decisions were also taken by the courts of Australia (Australian Refugee Tribunal, N/93/00656) and Canada (Canadian Immigration and Refugee Board, T91-01497).
- [145] Article I, 1948 Convention on the Prevention and Punishment of the Crime of Genocide.
- [146] ASKIN, K.D., *War Crimes Against Women - Prosecution in International War Crimes Tribunals*, M. Nijhoff, The Hague, 1997, p. 296.
- [147] There have been no studies comparing the numbers of men and women victims of sexual violence in armed conflicts. Studies have focused on the situation of women.
- [148] “But while the sexual nature of prison torture is the focus of much attention, the sexual brutalization of women believed to be supporters of opposing political parties has received very little emphasis or even acknowledgement. (...) The report on cases heard at the Truth and Reconciliation Commission women’s hearing in Durban on 25 October 1996 stated three reasons why women were targeted in the violence in Kwazulu/Natal: some women were violated because of the role of their family and friends, and others because of where they lived (...): some were activists, but even those who chose not to be were constantly targeted and violated because they were seen as the support structures in the communities”. PADARATH, A., “Women and violence in Kwazulu/Natal”, in TURSHEN, M., TWAGIRAMARIYA, C. (eds), *What Women Do in Wartime: Gender and Conflict in Africa*, Zed Books, London & New York, 1998, pp. 64-65.
- [149] BYRNE, B., *Gender, Conflict and Development*, BRIDGE Briefings on Development and Gender, Ministry of Foreign Affairs, Netherlands, 1996, p.16.
- [150] The ICRC’s *People on War* Report, see in particular p. 9.
- [151] Susan Brownmiller’s book is one of the first in-depth analyses of rape in wartime and is often cited. She notes the types of rape carried out against women in times of war: the rape of the defeated enemy’s women by the victorious army to show its strength; soldiers raping as a display that the defeated men cannot defend their own women (rape as humiliation); rape as a display of the conqueror; rape as a prize or payment for soldiers (who are rarely paid) – the “war booty”; rape as a way to measure victory and to prove the success and masculinity of soldiers; rape as an attempt to destroy the enemy through the destruction of the reproductive capacity of “their” women by impregnating them with the rapists’ children (rape as genocide); rape to spread hate and thereby keep men fighting; rape to spread fear amongst civilian populations to make them flee an area (rape as ethnic cleansing); rape as torture; rape as a means to brutalize, humiliate and terrorize; rape because soldiers are commanded to do so as a means of warfare. BROWNMILLER, S., *Against Our Will: Men, Women and Rape*, Simon and Schuster, New York, 1975, pp. 27-34.

- [152] UNFPA carried out an evaluation mission to interview women arriving in refugee camps from Kosovo in the period from 27 April to 8 May 1999. UNFPA Assessment Report on Sexual Violence in Kosovo, June 1999.
- [153] See “Violence sexuelle en situation de conflit au Congo: cas de Brazzaville”, July/November 1999, report of Ministère de la Santé, de la Solidarité et de l’Action Humanitaire Direction Générale de la Population, Direction de la Recherche et de la Santé de la Reproduction, UNFPA and UNICEF.
- [154] COOMARASWAMY, Radhika, “A question of honour: Women, ethnicity and armed conflict”, International Centre for Ethnic Studies Third Minority Rights Lecture, 25th May 1999, Geneva, p. 4. Dr Coomaraswamy is the United Nations Special Rapporteur on Violence Against Women.
- [155] See PECK, J., “The UN and the laws of war: How can the world’s peacekeepers be held accountable?”, *Syracuse Journal of International Law and Commerce*, Vol. 21, 1995, p. 283.
- [156] MACHEL, Graça, Expert of the UN Secretary-General, “The impact of armed conflict on children”, Report of the Expert of the Secretary-General, Ms Graça Machel, submitted pursuant to the resolution adopted by the General Assembly A/RES/48/157, 1996, A/51/306, p. 22, point 96.
- [157] For example see PECK, J., “The UN and the laws of war: How can the world’s peacekeepers be held accountable?”, *Syracuse Journal of International Law and Commerce*, Spring 1995, Vol. 21, pp. 283–310.
- [158] United Nations *Secretary-General’s Bulletin*, “Observance by United Nations forces of international humanitarian law”, 6 August 1999, ST/SGB/1999/13, p. 2, Section 1.1.
- [159] *Ibid.*, p. 2, Section 7.2.
- [160] “The role of women in United Nations peacekeeping”, in *Women 2000*, UN Division for the Advancement of Women, December 1995, Vol. 1/1995, p.8. Experience has also shown that “the inclusion of women in military, police and civilian components of UN peacekeeping has acted as a deterrent to the abuse of power, including sexual harassment and rape. It has been argued that problems involving the abuse of power and sexual exploitation might be minimized, if not eliminated, by increasing the number of women in peacekeeping missions, especially in decision-making positions”. *Ibid.*, p.8. It has further been acknowledged that female peacekeepers can often influence the efficiency of a peace operation, and act as role models for local women. With a better gender balance in peace operations, more problems or challenges might be identified and dealt with at an early stage. See *Women and Armed Conflicts*, Study for the Norwegian Ministry of Foreign Affairs, Norwegian Institute of International Affairs, 1999, pp. 71–110.
- [161] “The role of women in United Nations peacekeeping”, in *Women 2000*, UN Division for the Advancement of Women, December 1995, Vol. 1/1995, pp. 1–10. During the years 1957–1992, only 1% of UN peacekeeping personnel were women, (23,668 men and 260 women): see Table 1, p. 2.
- [162] UNHCR, Statement on the situation of women in the Former Yugoslavia, 16 December 1992, paras 4 and 5.

- [163] Author's comment on a presentation given by RICHTER-LYONETTE, E., Programme Co-ordinator, Co-ordination of Women's Advocacy (CWA) of Switzerland (who served as team leader of a "Swiss team" in Bosnia-Herzegovina and Kosovo between Feb. 1999 and May 2001), at a European Union Odysseus Project/ICMPD/Salud y Familia seminar on "Sexual violence in war conflicts: Treatment, defence and resocialisation of surviving women", Barcelona, 18 December 2000. The evaluations of psychosocial programmes by the Swiss Development Corporation and by the Norwegian Refugee Council also suggested that: (a) few of the programmes had been able to reach those for which they were originally designed, i.e. rape survivors, while they had various other positive, but unintended effects, and (b) funds were forthcoming in an initial phase but NGOs found it hard to turn emergency and early rehabilitation projects into reliable and well-designed long-term programmes with sufficient funding.
- [164] *Ibid.* Reference to Swiss Government report regarding evaluation of psychosocial projects in Bosnia-Herzegovina, 1999, given in the above presentation. Also note COCKBURN, C., *The Space Between Us: Negotiating Gender and National Identities in Conflict*, Zed Books, London and New York, 1998, pp. 174-210, which contains an in-depth analysis of the work carried out on behalf of women survivors of violence in Bosnia-Herzegovina.
- [165] UNFPA, Assessment Report on Sexual Violence in Kosovo, June 1999, pp. 8-9.
- [166] BUTALIA, U., "A question of silence: Partition, women and the state", in LENTIN, R. (ed.), *Gender and Catastrophe*, Zed Books, 1997, p. 95.
- [167] Council of Europe, in particular "VIP Guide: Vision, innovation and professionalism in policing violence against women and children", produced for the Council of Europe, Police and Human Rights Programme by Prof. L. Kelly, University of North London, December 2000, DH-AW-PO (2000) 13, p. 31.
- [168] COOMARASWAMY, R., *A Question of Honour: Women, Ethnicity and Armed Conflict*, International Centre for Ethnic Studies/Third Minority Rights Lecture, Colombo, 1999, p. 6. Dr Coomaraswamy is the United Nations Special Rapporteur on Violence Against Women.
- [169] See in particular CARPENTER, R. C., "Surfacing children: Limitations of genocidal rape discourse", *Human Rights Quarterly*, Johns Hopkins University Press, May 2000, Vol. 22, No. 2, pp. 429-477.
- [170] *Ibid.*, p. 477.
- [171] *Trafficking* had no standard definition until 2000. It generally included "all acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion...". Global Alliance Against Traffic in Women, Foundation Against Trafficking in Women, International Human Rights Law Group, "Human rights standards for the treatment of trafficked persons", distributed at request of ODIHR, PC.DEL/340/00, 19 June 2000. The reasons why women fall victim to trafficking vary. Generally, victims face poverty, unemployment, and political instability in their countries of origin. A certain, usually smaller, number of women are kidnapped, others are sold by friends or even

family members. Some women are also promised employment or marriage, only to find that they must actually serve as prostitutes to pay off their trafficking debts. They do not expect the exploitative and slave-like working conditions to which they will be subjected. Trafficking may be a means for criminal syndicates already expert in smuggling weapons or other commodities for war to make money. Women can be transported to a destination outside (or inside) their country of origin for forced prostitution, but also they can be abducted and forced into sexual slavery, a phenomenon which tends to occur more within the borders of the home country.

- [172] Slavery can be defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including sexual access through rape or other forms of sexual abuse. Critical elements in the definition of slavery are limitations on autonomy and on the power to decide matters relating to one’s sexual activity and bodily integrity. A claim of slavery does not require that a person be bought, sold or traded”. UN Commission on Human Rights, “Report on contemporary forms of slavery: Systematic rape, sexual slavery, and slavery-like practices during armed conflict”, Update to the final report submitted by Ms. Gay J. McDougall, Special Rapporteur, p. 3, para. 8, 1998, E/CN.4/Sub.2/1998/13, 1998.
- [173] “Women as chattel: The emerging global market in trafficking”, *Gender Matters Quarterly*, USAID Office of Women in Development, GenderReach Project, 1999, Issue No.1, p. 3.
- [174] See Council of Europe, documents on trafficking, particularly EG (99) 11, May–August 1999.
- [175] Briefing by Ms Sadako Ogata, United Nations High Commissioner for Refugees, to the Security Council, New York, 5 May 1999. See www.unhcr.ch/refworld.
- [176] UN Commission on Human Rights, “Report on contemporary forms of slavery: Systematic rape, sexual slavery, and slavery-like practices during armed conflict”, Update to the final report submitted by Ms. Gay J. McDougall, Special Rapporteur, pp. 4–5, para. 14. Update to report E/CN.4/Sub.2/1998/13, 1998.
- [177] *Ibid*, p.5, para. 17.
- [178] In the *Delalic and Others* case, the ICTY stated that “there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international humanitarian law”. The Tribunal considered rape to “constitute a physical invasion of a sexual nature, committed on a person under circumstances that are coercive”. It then stated that whenever rape and other forms of sexual violence meet the conditions for torture, they shall constitute torture, in the same manner as any other acts that meet those criteria. (ICTY, *Delalic and Others* (Judgment), 16 November 1998, paras 476, 479 and 496). In the *Furundzija* case, the Appeals Chamber of the ICTY stated: “With regard to the issue of the reaffirmation by the International Tribunal of rape as a war crime, the Appeals Chamber finds that the international community has long recognized rape as a war crime. In the *Delalic and Others* Judgment, one of the accused was convicted of torture by means of rape, as a violation of the laws or customs of war. This recognition by the international community of rape as a war crime is also reflected in the Rome Statute where it is designated as a war crime”. (ICTY, *Furundzija* (Appeal), 21 July 2000, para. 210).

- [179] Article 75 (2)(b) AP I.
- [180] Article 76 (1) AP I.
- [181] Article 77 (1) AP I.
- [182] Article 4 (2) (e) AP II.
- [183] See, for example, common Article 3 GCs, Article 75 (2) AP I and Article 4 (2) (a) AP II.
- [184] Articles 50/51/130/147 GC, I, II, III and IV respectively.
- [185] Article 5 (g) ICTY Statute and Article 3(g) ICTR Statute.
- [186] Article 4(e) ICTR Statute.
- [187] see ICTY, *Delalic and Others* (Judgement), 16 November 1998, paras. 476, 479 and 496 and ICTY, *Furundzija* (Appeal), 21 July 2000, para. 210.
- [188] The Statute defines “forced pregnancy” as the “unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law” (Article 7(2)(f)).
- [189] Articles 8(2)(b)(xxii) and 8(2)(e)(vi) ICC Statute respectively.
- [190] ICTR, *The Prosecutor v. Akayesu*, ICTR-96-T, paras. 597 *et seq.* The definition was approved and elaborated further by the ICTY in the *Furundzija* case, where the Tribunal defined the material elements of rape as:
- (i) the sexual penetration, however slight:
 - (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
 - (b) of the mouth of the victim by the penis of the perpetrator;
 - (ii) by coercion or force or threat of force against the victim or a third person.
- (ICTY, *The Prosecutor v. Furundzija*, IT-95-17/1-T, para. 185).
- [191] ICTY, *The Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23-T and IT-96-23/1-T.
- [192] Article 2 Inter-American Convention on the Prevention, Punishment and Elimination of Violence against Women, 1994.
- [193] Article 34, 1989 Convention on the Rights of the Child (CRC).
- [194] UNHCR, *Guidelines on the Protection of Refugee Women*, 1991, para. 71.
- [195] Article II(d) 1948 Convention on the Prevention and Punishment of the Crime of Genocide.
- [196] Article 3(a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25, 15 November 2000.
- [197] Articles 75(2)b and 76(1) AP I and Articles 4(2)e and 4(2)f AP II.
- [198] Article 8(2)(b)(xxii) and Article 8(2)(e)(vi) ICC Statute. According to the Elements of Crime of the ICC Statute, in both international and non-international armed conflict, “it is understood that the conduct described in this element [sexual slavery] includes trafficking in persons, in particular women and children” (Preparatory Commission for the International Criminal Court, Report, UN Doc. PCNICC/2000/INF/3/Add.2, 6 July 2000, Article 8(2)(b)(xxii)-2, footnote 53, p. 34, and Article 8(2)(e)(vi)-2, footnote 65, p. 39.

- [199] Article 7(1)(g) ICC Statute.
- [200] Article 6 CEDAW.
- [201] This is not the first time the General Assembly has addressed the problem of trafficking. As long ago as 1949 it adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.
- [202] Article 5 Protocol to Prevent, Suppress and Punish Trafficking in Persons. Recognizing the specific problems of trafficking, the Protocol also requires Parties to adopt measures to protect the privacy and identity of victims of trafficking, to provide them with information and assistance relating to and during criminal proceedings, and to consider the adoption of measures to provide for the physical, psychological and social recovery of victims of trafficking (Article 6). The Protocol also addresses the possible settlement or repatriation of victims, measures to prevent trafficking and programmes for exchange of information and training between the Parties to the Protocol. As of July 2001, 87 States had signed and 2 States had ratified the Protocol.
- [203] Human rights standards for the treatment of trafficked persons, January 1999, by: Global Alliance against Traffic in Women / Foundation against Trafficking in Women / International Human Rights Law Group.
- [204] For members of the civilian population not in detention. For ICRC activities in relation to detainees see next chapter.
- [205] See resolution 1, 27th International Conference of the Red Cross and Red Crescent, Geneva, *International Review of the Red Cross*, December 1999, No. 836, p. 878.
- [206] For the next four years the ICRC has committed itself to increasing its dissemination of international humanitarian law among parties to armed conflicts with regard to the protection which should be accorded to women and girl children, and with regard to the prohibition of sexual violence. For full text see ICRC Website www.icrc.org/eng/women.
- [207] McASKIE, C., Panel discussion “Emergencies impacting on women, women impacting on emergencies”, a panel discussion organized by OCHA/UNICEF/WFP during the 23rd Special Session of the General Assembly, OCHA News, Issue 51, June 26, 2000.
- [208] Although it has recently been contended that this “oft-quoted figure” of 80% is misleading, “women and children under 15 years of age are only slightly over-represented in refugee populations since they account for over 72 per cent of most African populations in population censuses. In other words, the demographic profile of refugees is little different from that of civilians”. TURSHEN, M., “Women’s war stories”, in TURSHEN, M., TWAGIRAMARIYA, C. (eds), *What Women Do in Wartime: Gender and Conflict in Africa*, Zed Books, London & New York, 1998, p. 15.
- [209] JONES, A., “Gender and ethnic conflict in ex-Yugoslavia”, *Ethnic and Racial Studies*, 17:1, 1994, pp. 123–4.
- [210] ELLIDGE, S., “Casualties of war”, *Marie Claire UK*, August 2000, p. 28.
- [211] BENJAMIN, J., FANCY, K., *The Gender Dimensions of Internal Displacement: Concept Paper and Annotated Bibliography*, Women’s Commission for Refugee Women and Children/UNICEF, New York, 1998, p. 23.

- [212] UNHCR Handbook, *People-oriented planning at work: Using POP to improve UNHCR programming*, Geneva, December 1994, p. 19.
- [213] BENJAMIN, J., FANCY, K., *The Gender Dimensions of Internal Displacement: Concept Paper and Annotated Bibliography*, Women's Commission for Refugee Women and Children/UNICEF, New York, 1998, p. 15 and p. 18.
- [214] As they have to share living quarters, washing and toilet facilities with many people (and these facilities are often easily accessible to men), many women are forced to choose between maintaining personal hygiene and maintaining their dignity and security.
- [215] Article 49 GC IV. Related to this prohibition of forced transfers is the rule in Article 51 GC IV that an Occupying Power can only require the population of territories to work within the occupied territory. These measures were drafted with the Second World War in mind, when millions of civilians were uprooted from their homes and deported under inhuman conditions for a variety of reasons, but often as a result of the creation of forced labour services. (PICTET, J., *Commentary on the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 1958, pp. 278-279.) See also Article 45 GC IV, which provides some protection against the displacement into third States of aliens in the power of a party to the conflict.
- [216] Article 49 GC IV.
- [217] Article 49 GC IV. Although primarily aimed at preventing an occupier from altering the ethnic make-up of the territory it occupies, in practice this is one of the few provisions in the Fourth Convention which protect civilians from the acts of their own State of nationality.
- [218] Examples include Article 51 GC IV, stating that the civilian population may be compelled to carry out work only *within* the occupied territory; Article 70(2) GC IV, which provides that nationals of the Occupying Power who, before the outbreak of hostilities, had sought refuge in the territory of the occupied State cannot be deported from the occupied territory; Article 76 GC IV, which provides that protected persons accused of offences must be detained within the occupied territory and, if convicted, must serve their sentence there; Article 54 AP I, which prohibits attacks on objects indispensable to the survival of the civilian population and mentions "causing civilians to move away" as one of the purposes of such attacks; and Article 51(7) AP I, which prohibits parties to a conflict from directing the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.
- [219] Article 17 AP II.
- [220] Article 147 GC IV, Article 85(4)(a) AP I and Articles 8(2)(a)(vii), 8(2)(b)(viii) and 8(2)(e)(viii) ICC Statute.
- [221] Article 85(4)(a) AP I and Article 8(2)(b)(viii) ICC Statute.
- [222] Article 12(1) ICCPR, Article 2(1) Protocol No. 4 to the ECHR, Article 22(1) ACHR and Article 12(1) ACHPR. Also of relevance are the provisions prohibiting arbitrary interference with persons' homes (Article 17 ICCPR, Article 8 ECHR and Article 11(2) ACHR). In this respect see also the decision of the ECtHR in the case of *Akdivar and*

others v. Turkey, (21893/93), judgments of 16.9.96, *Reports 1996 - IV* and 1.4.98, *Reports 1998-II*), and those prohibiting mass expulsions of aliens (Article 22(9) ACHR and Article 12(5) ACHPR).

- [223] Conclusion 5, 1984 Cartagena Declaration on Refugees.
- [224] *Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2, Annex, 11 February 1998.
- [225] In addition, the right of the civilian population not to be arbitrarily displaced has been asserted in a number of non-binding declarations and resolutions. For example, General Assembly resolution 2675 (XXV) of 1970 on the protection of civilian populations in armed conflicts affirms that such populations should not be the subject of forced transfers. Similarly, in a resolution of 1994 on the right of freedom of movement, the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities affirmed the right of persons to remain in peace in their own homes, on their own lands and in their own countries and urged governments and other actors involved to do everything possible in order to cease at once all practices of forced displacement, population transfer and “ethnic cleansing” in violation of international legal standards. (UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/Res/1994/24, 26 August 1994, paras. 1 and 3).
- [226] Article 49 GC IV. This provides that the Occupying Power undertaking such transfers or evacuations must ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.
- [227] Article 17(1) AP II.
- [228] Articles 12–24 and 33, 1951 Convention relating to the Status of Refugees. As refugees are not nationals of their State of asylum, their entitlement to certain of these rights is not on an equal basis to that of nationals. Reference should also be made to Section III of the *Guiding Principles on Internal Displacement*, which lays down the fundamental rights to which internally displaced persons are entitled during displacement.
- [229] *Guidelines on the Protection of Refugee Women*, UNHCR, July 1991.
- [230] Article 49 GC IV.
- [231] For the sake of completeness it should be noted that unjustifiable delay in the repatriation of civilians is a grave breach of Additional Protocol I (Article 85(4)b AP I).
- [232] Article 12(4) ICCPR, Article 3(2) Protocol No. 4 ECHR, Article 22(5) ACHR, Article 12(2) ACHPR.
- [233] Article 12(1) ICCPR, Article 2(1) Protocol No. 4 ECHR, Article 22(1) ACHR, and Article 12(1) ACHPR.
- [234] Chapter I.1, Statute of the Office of the United Nations High Commissioner for Refugees, adopted by General Assembly resolution 428(V), 14 December 1950.
- [235] EXCOM Conclusion No. 40 (XXXVI), 1985; *Voluntary Repatriation*, UN Doc. A/AC.96/673, para. 115(5); Article 5(1) OAU Convention governing the Specific Aspects of Refugee Problems in Africa, 1969.

- [236] *Internally displaced persons: The mandate and role of the ICRC*, February 2000, p. 2.
- [237] ICRC definition of an IDP. *Ibid.*
- [238] As defined by the Seville Agreement of 1997 between the International Federation of Red Cross and Red Crescent Societies, the International Committee of the Red Cross and National Red Cross and Red Crescent Societies. See Seville Agreement Training Manual, *Implementing the Agreement on the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement*, January 1999, pp. 82 and 84.
- [239] *Ibid.* See Articles 5.3.1 and 5.3.2.
- [240] LAVOYER, J.-P., “Refugees and internally displaced persons: International humanitarian law and the role of the ICRC”, *International Review of the Red Cross*, March-April 1995, No. 305, p. 174.
- [241] Articles 35, 48 and 38(4) GC IV.
- [242] Article 12(2) ICCPR, Article 2(2) Protocol No.4 ECHR, Article 22(2) ACHR, Article 12 (2) ACHPR.
- [243] Article 12(1) ICCPR, Article 2(1) Protocol No.4 ECHR, Article 22(1) ACHR, Article 12 (1) ACHPR.
- [244] Article 26, 1951 Convention relating to the Status of Refugees. Also of relevance are Articles 27 and 28 relating to identity papers and travel documents.
- [245] However, the ICRC travel document is not an identity paper as such and is only valid for the period of the trip. It has to be returned to the ICRC once the traveller arrives at his/her final destination.
- [246] With regard to civilian detainees, see chapter on *Detention*.
- [247] Inter-Agency Workshop on Integration of Gender into Needs Assessment and Planning of Humanitarian Assistance, Summary Report, July 1999, p. 1.
- [248] PALMER, C.A., ZWI, A.B., “Women, health and humanitarian aid”, *The Journal of Disaster Studies*, September 1998, Vol. 22 No. 3, 1998, p. 239.
- [249] The use of powdered milk can seriously endanger the health of a baby (through parasitic and infectious diseases). In armed conflict situations (e.g. detention centres, camps for the displaced etc.) the strict rules of hygiene necessary for the preparation of baby milk can rarely be followed closely and there may be a lack of baby-care resources.
- [250] ICRC information gathered by the author from delegates in the course of the research.
- [251] *Gender and the Food Economy Approach*, WFP Policy Commitments to Women, 1996–2001, p. 2.
- [252] Although note the work of WFP, *Ibid.* “Commitment I: Provide direct access to appropriate and adequate food. Target relief food distributions to households, ensuring that women control the family entitlement in 80 percent of WFP handled and subcontracted operations.”
- [253] COHEN, R. “Protecting internally displaced women and children”, in DAVIES, W. (ed.), *Rights Have No Borders, Internal Displacement Worldwide*, Norwegian Refugee Council/Global IDP Survey, 1998, p. 69.
- [254] UN Charter, Article 41.

- [255] In the discussion that follows, the term “food” is taken to include drinking water. In addition to the rules concerning food, there are rules relating to the question of access to drinkable water, which will be outlined below (see section on *Water*).
- [256] Article 52(2) AP I defines these as: “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”. Civilian objects are defined negatively as all objects which are not military objectives (Article 52(1) AP I).
- [257] Articles 35(3) and 55(1) AP I. The ICC Statute provides that “intentionally launching an attack in the knowledge that such attack will cause (...) widespread, long-term and severe damage to the natural environment” in international armed conflicts is a war crime (Article 8(2)(b)(iv) ICC Statute).
- [258] 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. Of relevance also is the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. Reference should also be made to the provisions, applicable in international and non-international armed conflicts, relating to the protection of works and installations containing dangerous forces – dams, dykes and nuclear electrical generating stations – attacks on which could cause severe losses among the civilian population (Article 56(1) AP I and Article 15 AP II). Both rules are of relevance as they not only prevent immediate and severe loss of life but also ensure that food production to sustain the population is not rendered impossible.
- [259] Article 54(1) AP I.
- [260] Article 54(2) AP I.
- [261] *Ibid.* This list is not exhaustive, and the prohibition on attacking such objects is intended to cover all possibilities, including the pollution of water supplies by chemical or other agents or the destruction of crops by defoliants (SANDOZ, Y., SWINARSKI, C., ZIMMERMANN, B. (eds), *Commentary on the Additional Protocols of 8 June 1977*, ICRC, 1987 (hereinafter “*Commentary on the APs*”), p. 655.) The deployment of anti-personnel mines in agricultural areas with the specific purpose of denying the sustenance value of the land to the civilian population would also amount to a violation of the prohibition. Article 54(3) AP I makes limited exceptions to the prohibition, covering situations in which the foodstuffs and other objects are used as sustenance solely for armed forces or in direct support of military action. The provision adds, however, that even in cases where action is taken against objects used in direct support of military operations, no action can be taken that would leave the civilian population with such inadequate food or water as to cause its starvation.
- [262] Article 54(4) AP I.
- [263] Article 14 AP II.
- [264] Article 8(2)(b)(xxv) ICC Statute. Even though this provision does not expressly mention it, food is obviously among such indispensable objects.

- [265] Article 23 GC IV. This rule was intended to deal primarily with the passage of humanitarian assistance in blockade situations.
- [266] Article 70(1) AP I. This provision does not apply in situations of occupation, which are governed by Articles 68, 69 and 71.
- [267] *Commentary on the APs*, pp. 819–820. Additional Protocol I specifies that offers of relief shall not be regarded as interference in the armed conflict or as unfriendly acts. Parties to a conflict and States party to the Protocol are required to allow and facilitate rapid and unimpeded passage for all relief consignments, equipment and personnel, even if such assistance is intended for the civilian population of the adverse party (Article 70(2) AP I). Parties to the conflict are also required to protect relief consignments and facilitate their rapid distribution and they and States Parties to the Protocol, must not in any manner whatsoever, divert or delay relief consignments (Article 70(2) and 70(3)(c) AP I). They are however, allowed to prescribe technical arrangements, including search, under which passage of relief is permitted and may make such permission conditional on the distribution of the relief under the local supervision of a Protecting Power (Article 70(3)(a) and (b) AP I). Article 71 AP I also provides that the personnel participating in relief actions must be respected and protected.
- [268] Article 55 GC IV. Foodstuffs available in the occupied territory may only be requisitioned by the occupier under very stringent conditions, in which case the occupier must ensure that fair value is paid for any requisitioned goods and in any event only if the requirements of the civilian population have been taken into account.
- [269] Articles 60 and 59 GC IV. The Convention specifies that such schemes shall consist in particular of the provision of foodstuffs, medical supplies and clothing. All States party to the Convention are obliged to permit the free passage of relief and must guarantee its protection (Article 59 GC IV). Furthermore, the Occupying Power must not divert relief consignments and must facilitate their rapid distribution, which is to be carried out in cooperation with and under the supervision *inter alia* of the ICRC or any other impartial humanitarian body (Articles 60 and 61 GC IV. See also Articles 68, 69 and 71 AP I.)
- [270] Article 71(2) AP I.
- [271] Article 18(1) AP II.
- [272] Article 18(2) AP II.
- [273] According to the *Commentary on the APs*, “if the survival of the civilian population is threatened and a humanitarian organization fulfilling the required conditions of impartiality and non-discrimination is able to remedy this situation, relief actions must take place (...). The authorities responsible for safeguarding the population in the whole of the territory of the State cannot refuse such relief without good grounds. Such a refusal would be equivalent to a violation of the rule prohibiting the use of starvation as a method of combat as the population would be left deliberately to die of hunger without any measures being taken”. (*Commentary on the APs*, p. 1479.) This is particularly important in situations when the authorities concerned might not be willing to grant access to relief operations to the parts of their territory under the control of dissident armed forces.

- [274] Articles 8(2)(b)(iii) and 8(2)(e)(ii) ICC Statute.
- [275] Article 8(2)(b)(xxv) ICC Statute.
- [276] Article 23 GC IV.
- [277] Article 70(1) AP I.
- [278] Article 50 GC IV.
- [279] Article 89 GC IV.
- [280] Article 11 ICSECR and Article 27(3) CRC. See also Article 25(1) of the 1948 Universal Declaration of Human Rights.
- [281] Article 12, 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.
- [282] Economic and Social Council, General Comment 12, The Right to Adequate Food, UN Doc. E/C.12/1999/5, CESCR, 12 May 1999, para. 18. Increasing attention has been devoted to the issue of the right to food in recent years, marked by the appointment of a special rapporteur on the right to food by the UN Commission on Human Rights.
- [283] UN Human Rights Committee, General Comment 6, 30 July 1982, para. 5.
- [284] Articles 23 and 20, 1951 Refugee Convention. The particular needs of refugee women and children, including with regard to access to adequate food and clean water, are the subject of the detailed UNHCR *Guidelines on the Protection of Refugee Women*, referred to earlier.
- [285] Article II(c), 1948 Convention on the Prevention and Punishment of the Crime of Genocide.
- [286] General Assembly resolution 3318(XXIX) of 14 December 1974, para. 6.
- [287] SEGALL, A., "Economic sanctions: legal and policy constraints", *International Review of the Red Cross*, No. 836, December 1999, p.763.
- [288] For the sake of brevity reference will only be made to sanctions imposed by the UN Security Council, but it should be borne in mind that other international organizations, such as the European Union, also have the power to impose sanctions and have done so on a number of occasions, as have individual States unilaterally.
- [289] In practical terms this means that when sanctions are imposed in situations of armed conflict they must not violate the relevant rules of international humanitarian law and non-derogable human rights, and if they are imposed in times of peace they must not violate relevant human rights norms.
- [290] UN Committee on Economic, Social and Cultural Rights, General Comment No. 8: *The relationship between economic sanctions and respect for economic, social and cultural rights*, E/C.12/1997/8, 4 December 1997.
- [291] UN Committee on Economic, Social and Cultural Rights, General Comment No. 12: *The right to adequate food*, E/C.12/1999/5, 5 May 1999, para. 37.
- [292] In his report of 1999 on the protection of civilians in armed conflicts, the Secretary-General referred to the problem of the humanitarian impact of sanctions and recommended first that greater use be made of "targeted sanctions", secondly, that a permanent technical review mechanism of UN and regional sanctions regimes be established in

order to ascertain the probable impact on civilians, and thirdly that standards and rules be developed to minimize the humanitarian impact of sanctions and that sanctions not be imposed without provision for “obligatory, immediate and enforceable humanitarian exemptions”. Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflicts, S/1999/957, 8 September 1999, recommendations 22-24.

- [293] See also Security Council resolution 986 (1995), which authorized Iraq to export a certain quantity of petroleum and to use the proceeds thereof to “meet the humanitarian needs of the Iraqi population” - the so-called “oil-for-food” programme.
- [294] Security Council resolution 757, 30 May 1992, para. 4(c). See also resolution 917 whereby the Security Council extended the existing selective sanctions on Haiti to all commodities and products with the exception of “supplies intended strictly for medical purposes and foodstuffs”. (Security Council resolution 917, 6 May 1994, para. 7(a).)
- [295] ICRC Special Report: *Assistance*, March 2000, p. 3.
- [296] After an impartial field assessment, priorities for intervention are set according to the “assistance pyramid” concept, whereby preference should be given to the base of the pyramid. Access to water, food and other essential goods for survival become the main priorities, ahead of hygiene and access to medical care. Obviously, such an approach should always be mindful of local cultures and customs. ICRC Special Report: *Assistance*, March 2000, p. 5.
- [297] *Ibid.*, p. 7.
- [298] ICRC information gathered by the author from delegates in the course of the research.
- [299] See *Detention* chapter of this report.
- [300] The UNHCR *Guidelines on the Protection of Refugee Women* highlight that: “Decisions about food and other item distribution are generally made by international organizations and host countries in consultation with the male leaders of the camps. Yet, these male leaders may have little understanding of the needs and circumstances of those who cook the food, feed or clothe their families: the women. As a result, the distribution procedures and contents of the food basket may be inappropriate. Food that is inconsistent with the dietary traditions of the refugees may be provided. Or, food may be offered that requires preparation that cannot be readily accomplished in the camp setting. These problems are further compounded by cultural practices among some refugee populations that require that men be fed first. Where supplies are limited, women and children may not receive adequate food and will be the first to suffer. The predominance of male-dominated food distribution is at clear odds with traditional patterns in which women play a lead role in food production”. UNHCR, Geneva, 1991, paras. 83 and 84, p. 49.
- [301] ICRC Website: Appropriate and environment-friendly applications, May 2000.
- [302] ROBERTS, L., “Diminishing standards”, *ICRC Forum: War and Water*, 1998, pp. 98, 101.
- [303] ICRC Special Report: *Assistance*, March 2000, p. 10.
- [304] Article 54(2) AP I and Article 14 AP II.
- [305] Article 14(2)(h) CEDAW.

- [306] Article 24(2)(c) CRC.
- [307] ICRC information gathered by the author from delegates in the course of the research.
- [308] ICRC Special Report: *Assistance*, March 2000, p. 7.
- [309] “The World Bank reports that 70 percent of the food grown in developing countries is produced by women. Although the pattern differs somewhat by region, women in developing countries are also typically involved in animal husbandry, activities aimed at storing food, selling and exchanging produce, and the preparation and cooking of food. In Africa, women are often the sole cultivators whereas in Asia joint cultivation by spouses is more typical. In Latin America, women tend to take over cultivation when their husbands seek employment in the cities to supplement the agricultural work.” UNHCR, *Guidelines on the Protection of Refugee Women*, 1991, p. 49, para. 84.
- [310] SCHUMER, T., LOANE, G. (eds), “The wider impact of humanitarian assistance: The case of Sudan and the implication for European Union policy”, *CPN Publications, NOMOS Conflict Prevention Network Series*, 2000.
- [311] The danger of mines is also considered in the section on *personal safety*.
- [312] ICRC information gathered by the author from delegates in the course of the research.
- [313] FARHA, L., “Women’s rights to land, property and housing”, *Forced Migration Review* 7, Refugee Studies Centre and Norwegian Refugee Council/Global IDP Project April 2000, p. 23.
- [314] ICRC information gathered by the author from delegates in the course of the research.
- [315] The United Nations Centre for Human Settlement, UNIFEM and the United Nations High Commissioner for Refugees, in conjunction with the Rwandan government, hosted the first Interregional Consultation on Women’s Land and Property Rights in Situations of Armed Conflict and Reconstruction in Kigali/Rwanda in February 1998. This event brought together activists, academics, lawyers and politicians from around the world. For further reading see: FARHA, L. “Women’s land and property rights in situations of armed conflict: Towards a human rights approach”, *Women’s Human Rights in Conflict Situations*, Newsletter, Vol. 3, No. 1, May 1999, p. 2.
- [316] “Repeatedly women explained that land in their country is regulated by customary laws which do not recognize the capacity of women to own or inherit land and property in their own right. This becomes particularly problematic during times of armed conflict and reconstruction, as it means that women who have been separated from male family members or whose husbands, fathers, uncles or brothers die during flight or return, have no recognized capacity to inherit or claim the properties of their deceased male relations. In turn, they are rendered homeless, landless and without a means of subsistence. In those countries where customary law was not an issue, other problems were identified including cultural barriers which inhibit women from using existing statutory laws to claim and secure their land, as well as a lack of available resources to train and educate women to ensure that once they secure land, they can adequately maintain and benefit from the land.” *Ibid*.
- [317] According to a report of the Women’s Commission for Refugee Women and Children, the Rwandan government, initiated under the mandate of the Ministry of Gender and

Women's Promotion, recently promulgated legislation giving Rwandan women the right to inherit property for the first time. Women's Commission for Refugee Women and Children, *Rebuilding Rwanda: A struggle men cannot do alone*, Delegation Report, Winter 2000, p. 5.

- [318] Article 54(2) AP I.
- [319] Article 55 AP I. Also of relevance are the prohibitions in the 1925 Protocol for the Prohibition of Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare; the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques; and the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.
- [320] Article 23(g), 1907 Hague Regulations respecting the Laws and Customs of War and Article 53 GC IV with regard to occupation.
- [321] Article 33 GC IV.
- [322] Articles 14 and 4(2)(g) AP II.
- [323] Articles 8(2)(b)(xvi), 8(2)(e)(v), 8(2)(b)(xiii) and 8(2)(e)(xii) ICC Statute respectively.
- [324] Article 1 Protocol No.1 ECHR 1952, Article 14 ACHPR. See also Article 17 Universal Declaration of Human Rights, 1948.
- [325] Article 15(2) CEDAW.
- [326] ICRC information gathered by the author from delegates in the course of the research.
- [327] For further information see ICRC Special Report: *Assistance*, March 2000, p.6.
- [328] ICRC information gathered by the author from delegates in the course of the research.
- [329] *Ibid.*
- [330] "UNHCR and NGOs have implemented many programmes to help women's income generating activities. A number of problems have affected the success of these attempts. Generally, they targeted marginal economic activities such as handicrafts for which there is often not a sustainable market. Women have generally not been involved in some of the larger projects that focus on reforestation, infrastructure development, or agricultural activities. Interestingly, in many of the cultures from which the refugee women come, women are traditionally involved in these activities, raising questions about whether Western biases about women's traditional roles may be constraining choices. Few of the women's projects have led to long-term economic self-sufficiency for the women involved. The programmes suffer from such problems as: lack of clarity regarding the goals and objectives; lack of proper planning (skills assessment, market research, identification of appropriate participants, etc.); excessive administrative costs and/or inadequate funding; unrealistic time-lines; and inadequate consultation with the refugee community." UNHCR, *Guidelines on the Protection of Refugee Women*, Geneva, 1991, pp. 58-59, paras 117-118.
- [331] ICRC information gathered by the author from delegates in the course of the research.
- [332] See for example Articles 40 and 51 GC IV. Compelling a protected person to serve in the forces of a hostile power is a war crime under the ICC Statute when committed in international conflicts (Article 8(2)(a)(v) ICC Statute).

- [333] Article 39 GC IV.
- [334] *Ibid.*
- [335] Article 52 GC IV.
- [336] Article 6 ICESCR, Article 6 Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights 1988 and Article 15 ACHPR.
- [337] Article 11 (1) CEDAW.
- [338] Article 17 1951 Convention relating to the Status of Refugees. See also Article 18 relating to self-employment and Article 19 on liberal professions.
- [339] At times the authorities also want to keep the displaced population motivated to return, and to this end resist improving its living conditions to avoid the risk of its resettling permanently.
- [340] Article 52(1) AP I.
- [341] Article 52(2) AP I.
- [342] Article 52(3) AP I.
- [343] Article 53 GC IV.
- [344] Article 33 GC IV.
- [345] *Ibid.*
- [346] Article 49 GC IV.
- [347] Article 69 AP I.
- [348] Article 70(1) AP I. Although numerous provisions deal with third-party relief actions in situations of occupation, they do not expressly address the question of shelter.
- [349] Article 61(a) (iii) and (x) AP I. Civil defence organizations are those establishments organized either by parties to the conflict or by third States for the performance of the aforementioned tasks and devoted exclusively thereto (Article 61(b) and Article 64 AP I).
- [350] Articles 62 and 63 AP I.
- [351] Article 62(3) AP I.
- [352] Article 14 GC IV.
- [353] Article 15 GC IV.
- [354] Articles 4(2)(b) and 4(2)(g) AP II. Forced displacement is also prohibited in non-international conflicts, and in situations where evacuations are effected Additional Protocol II requires that “all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health and nutrition” (Article 17 AP II). Although the Protocol contains provisions relating to relief actions, they do not expressly refer to the provision of assistance in regard to shelter (Article 18 AP II).
- [355] Article 147 GC IV.
- [356] Articles 8(2)(a)(iv), 8(2)(b)(xiii), 8(2)(e)(xii) and 8(2)(e)(v) ICC Statute respectively.
- [357] Articles 8(2)(b)(ii), 8(2)(b)(iv) and 8(2)(b)(v) ICC Statute. See also Article 85(3)(b) AP I.
- [358] Article 17 ICCPR, Article 8 ECHR, Article 11 ACHR.
- [359] Article 11(1) ICESCR.
- [360] Article 27(3) CRC and Article 14(2) CEDAW.
- [361] Article 21, 1951 Convention relating to the Status of Refugees.

- [362] The General Framework Agreement for Peace in Bosnia and Herzegovina, initialled in Dayton on 21 November 1995 and signed on 14 December 1995 in Paris, Annex 7, Agreement on Refugees and Displaced Persons, Article 1.
- [363] For further information see the Website of the Commission for Real Property Claims of Displaced Persons and Refugees at <http://www.crpc.org.ba>.
- [364] See <http://www.unhcr.org/press2000/kosovopr.html>.
- [365] Article 59 GC IV. Additional Protocol I extends the responsibilities of the Occupying Power by requiring it “to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing (...) and other supplies essential to the survival of the civilian population” (Article 69 AP I).
- [366] Article 23 GC IV.
- [367] Article 70 AP I.
- [368] Article 27 GC IV and Article 75(2)(b) AP I.
- [369] Common Article 3 GCs and Article 4(2)(e) AP II.
- [370] Article 5 ICCPR, Article 3 ECHR, Article 5 ACHR, and Article 5 ACHPR.
- [371] Article 11 ICESCR and Article 27(3) CRC.
- [372] Platform for Action and the Beijing Declaration, Fourth World Conference on Women, Beijing 1995, UN 1996, Section on Women and Health, C89, p. 56.
- [373] “The access of refugee women to health-care services is important both to their own health and to the welfare of the broader community. Women are also the prime providers of health-care to other family members. Thus, the health of other members of the family will be directly related to a mother’s knowledge or interest in promoting a healthy environment and taking preventive actions against disease”, UNHCR, *Guidelines on the Protection of Refugee Women*, Geneva, July 1991, p. 51.
- [374] “Complications of pregnancy and birth remain untreated in the absence of medical services, including lack of access to reproductive health services. The menstrual needs of women, particularly in shelters, often go unaddressed. Due to discrimination in the allocation of resources and food, women become the first to suffer extensive anaemia and famine with implications for their babies and unborn children. (...) Rape and sexual harassment increase the spread of sexually transmitted diseases, including HIV/AIDS, and unwanted pregnancies.” Inter-Agency Standing Committee (IASC) XXXVI Meeting, Rome, 22–23 April 1999, Background Document for Item 1b, Final Draft, Background Paper “Mainstreaming gender in the humanitarian response to emergencies”, p. 5.
- [375] Reproductive health care (RHC) is most commonly defined as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive health system and to its function and processes”. Definition adopted at the International Conference on Population and Development (ICPD) in Cairo in 1994, and endorsed by WHO in 1995. See PALMER, C.A., LUSH, L., ZWI, A.B., London School of Hygiene and Tropical Medicine, “The emerging international policy agenda for reproductive health services in conflict settings”, *Social Science & Medicine* 49, 1999, p. 1691.
- [376] Reproductive Health for Refugees Consortium, RHRC Fact Sheets, Fact Sheet -

- Emergency Obstetrics in Refugee Settings (no date), p. 10. Original source: WHO, *Mother-Baby Package: Implementing Safe Motherhood*, Geneva, 1994.
- [377] WHO, *Interpreting Reproductive Health*, ICPD+5 Forum, The Hague, 1999, p. 16.
- [378] An infection of the genital tract at any time between the onset of rupture of membranes or labour and the 42nd day following delivery or abortion. *Safe Motherhood, Puerperal Sepsis Module*, WHO 1996, p. 148.
- [379] "An estimated 4 million African women will die of AIDS by the year 2000." ANKRAH, E.M., "AIDS, socioeconomic decline and health: A double crisis for the African woman.", in SHERR, L., HANKINS, C., BENNETT, L., *AIDS as a Gender Issue: Psychosocial Perspectives*, 1996, p. 99.
- [380] WHO, *Interpreting Reproductive Health*, ICPD+5 Forum, The Hague, 1999, p. 16-17.
- [381] *Ibid.*
- [382] ICRC Health and Relief Division, May 2000.
- [383] The term "FGM" comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons. The most common type of FGM is excision of the clitoris and the labia minora, accounting for up to 80% of all cases. WHO, Aide-Memoire No. 241, June 2000.
- [384] WHO, *Mother-Baby Package: Implementing Safe Motherhood*, Geneva, 1996, p.26.
- [385] Global programme for vaccines and immunization, WHO, 1998.
- [386] WHO, Report of the meeting of SAGE (Scientific Group of Experts) of the children's vaccine initiative and the global programme for vaccines and immunization, Geneva, June 1996, p.13.
- [387] Although they will not be discussed here, the numerous rules of international humanitarian law which protect the health of combatants - the subject of two specific Conventions - should not be forgotten (Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949 (the First Geneva Convention) and Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949 (the Second Geneva Convention)).
- [388] Article 16 GC IV.
- [389] Article 17 AP I.
- [390] Article 16 GC IV.
- [391] Article 17 GC IV. The Convention also specifically addresses the medical needs of civilians who find themselves in the control of a party to a conflict of which they are not nationals, providing that they shall be entitled to receive medical attention and hospital treatment to the same extent as nationals of the State in which they find themselves (Article 38(2)). This non-discrimination clause is of particular importance to those who find themselves in the territory of the enemy State because of the resentment that the conflict may be generating towards enemy civilians.

- [392] Article 10 AP I. The Protocol provides a definition of the wounded and sick which expressly includes “*maternity cases, new-born babies and other persons who may be in immediate need of assistance or care, such as (...) expectant mothers (...)*” (Article 8(a) AP I).
- [393] Articles 16 and 17 AP I.
- [394] *Ibid.* The question of the role of the civilian population with regard to the wounded and sick is expressly addressed by the Protocol, which requires the civilian population to respect the wounded and sick and not to commit acts of violence against them, and which also expressly permits civilians – together with aid societies – to collect and care for the wounded and sick either on their own initiative or in response to an appeal from the parties to the conflict (Article 17 AP I). The provision of medical services, including first aid, also falls within the humanitarian activities of civil defence organizations (Article 61(vi) AP I).
- [395] Article 55 GC IV. This obligation is strengthened by Article 14 AP I which requires the occupier to ensure that the medical needs of the civilian population continue to be satisfied.
- [396] Article 55 GC IV.
- [397] Article 56 GC IV. The Fourth Convention contains numerous other provisions relating to health needs in situations of occupation. They include rules on the circumstances in which civilian hospitals may be requisitioned (Article 57); the requirement that any evacuations of the civilian population be carried out in satisfactory conditions of hygiene and health (Article 49); and the rule that the civilian population of the occupied territory can only be compelled to carry out work necessary either for the needs of the army of occupation or *inter alia* for the health of the population of the occupied territory (Article 51).
- [398] Article 50 GC IV.
- [399] Article 15(3) AP I.
- [400] Article 18 GC IV.
- [401] Article 19 GC IV.
- [402] Articles 20–22 GC IV. Additional Protocol I builds upon these measures. It expressly extends the protection offered to hospitals and to “medical units” (Article 12 AP I. See Article 8(e) AP I for a definition of “medical units”); reiterates the duty to respect and protect civilian medical personnel; grants such persons access to any place where their services are essential (Article 15 AP I); and further develops the rules governing and protecting medical transports (Articles 21–31 AP I).
- [403] The red lion and sun is no longer in use. In 1980, the Islamic Republic of Iran announced that it adopts the red crescent as its distinctive sign instead of the red lion and sun.
- [404] Articles 38–44 and 53–54 GC I, Articles 41–45 GC II, Articles 18–22 GC IV, Articles 8(1), 18(4), 38 and 85(3)f AP I and Articles 4 and 5 Annex I to AP I.
- [405] Article 23 GC IV.
- [406] Article 59 GC IV and Article 70 AP I.
- [407] Article 70(1) AP I.

- [408] Article 32 GC IV and Article 11 AP I.
- [409] Article 7 AP II.
- [410] Articles 10 and 11 AP II.
- [411] Article 5(2)(e) AP II.
- [412] Article 18(2)AP II.
- [413] Article 12 AP II.
- [414] Articles 8(2)(b)(ix), 8(2)(b)(xxiv), 8(2)(e)(ii) and 8(2)(e)(iv) ICC Statute.
- [415] Article 50 GC I, Article 51 GC II, Article 130 GC III, Article 147 GC IV. See also Articles 11 and 85 AP I.
- [416] Articles 8(2)(b)(x) and 8(2)(e)(xi) ICC Statute.
- [417] Article 12 ICESCR.
- [418] Article 16 ACHPR and Article 24 CRC - which expressly refers to the need to take measures to ensure appropriate pre- and post-natal health care for mothers.
- [419] ICRC Special Report: *Assistance*, March 2000.
- [420] ICRC information gathered by the author from delegates in the course of the research.
- [421] *Ibid.*
- [422] ICRC Health and Relief Division, May 2000.
- [423] “(...) Prostheses and rehabilitation programmes tend to be directed towards ex-servicemen. Disabled women have problems in performing even routine household chores and thereby become socially stigmatised. They can also be cast off by their husbands.” Action plan for gender equality in humanitarian assistance, 1997–2001. Swedish International Development Cooperation Agency, (SIDA).
- [424] ICRC Special Report: *Assistance*, March 2000, p. 13.
- [425] *Ibid*, pp. 14–15.
- [426] The ICRC endeavours to hand over the management of such projects or, in the absence of an appropriate partner, sets up independent workshops to provide assistance for patients. Following handover the ICRC continues to provide “ongoing consultant expertise and a lower-intensity support to projects”. *Ibid*, pp. 15–16.
- [427] WAKEMAN, W., *Gender Issues Sourcebook for Water and Sanitation Projects*, Working Group on Gender Issues of the Water and Sanitation Collaborative Council, January 1995, p. 8.
- [428] FAIZ RASHID, S., MICHAUD, S., “Female adolescents and their sexuality: notions of honour, shame, purity and pollution during the floods”, *Journal of Disaster Studies*, 2000, Vol. 24 (1), p. 54.
- [429] WAKEMAN, W., *Gender Issues Sourcebook for Water and Sanitation Projects*, Working Group on Gender Issues of the Water and Sanitation Collaborative Council, January 1995, p. 9.
- [430] *Ibid*, Annex, p. 1.
- [431] ICRC Special Report: *Assistance*, March 2000, p. 11.
- [432] These factors often determine the implications of a death of a family member for the structure of the surviving family unit. For example, in some cultures the death of a husband requires a widow and her children to be cared for by extended family members or even requires the widow to marry her brother-in-law.

- [433] Article 74, AP I; *Commentary on the APs*, p. 859, para. 2997. See also ICRC statement to the Symposium of National Societies on Family Reunification, Budapest, 23–26 November 1994.
- [434] Article 46, 1907 Hague Regulations on the Laws and Customs of War.
- [435] Article 27 GC IV.
- [436] *Ibid.*
- [437] Article 49 GC IV.
- [438] Article 82 GC IV. In recognition of the importance of family life, this article goes on to provide that “*wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life*”. The section on fundamental guarantees in Additional Protocol I reiterates the principle that, in cases where families are detained or interned, they must, whenever possible, be held in the same place and accommodated as family units (Article 75(5) AP I. See also Article 77(4) AP I).
- [439] Article 128 GC IV.
- [440] Articles 107, 116 and 128 GC IV.
- [441] Article 24 GC IV.
- [442] Article 50 GC IV. The term “personal status” includes identity, family status and nationality. The effect of this provision is to prohibit acts such as attempting to alter the identity of a child, for example with a view to adoption abroad, or to make it impossible to reunite the child with its family.
- [443] Article 78(3) AP I.
- [444] Articles 43 and 106 GC IV, Article 79 AP I and Articles 17 and 18 GC III respectively.
- [445] Article 25 GC IV. This article further provides that if it should become difficult or impossible to exchange correspondence via the ordinary postal service, the parties can apply to the Central Information Agency to determine how best to fulfil their obligations.
- [446] Articles 70 and 71 GC III relating to capture cards and correspondence and Articles 106 and 107 GC IV relating to internment cards and correspondence.
- [447] Article 122 GC III and Articles 136–141 GC IV.
- [448] Articles 123 GC III and 140 GC IV.
- [449] Article 26 GC IV. This obligation is reiterated and emphasized in Additional Protocol I (Article 74 AP I).
- [450] Article 16 GC IV.
- [451] Article 15 GC I.
- [452] Article 16 GC I.
- [453] *Ibid.*
- [454] Article 17 GC I. Similar provisions are contained in the Second Convention with regard to wounded, sick and shipwrecked members of armed forces at sea and in the Third Convention with regard to prisoners of war (Articles 18–20 GC II and Articles 17 and 120 GC III).
- [455] Article 32 AP I. Article 33 AP I lays down detailed procedures to be followed by parties to a conflict to locate and identify the missing and the dead.

- [456] Articles 15 and 16 GC I and Articles 18 and 19 GC II.
- [457] Article 17 GC I. The Second Geneva Convention provides for burial at sea (Article 20 GC II).
- [458] Article 120 GC III and Article 130 GC IV.
- [459] Article 34 AP I. This article also includes measures concerning the maintenance of the burial sites and provides that exhumation should only be carried out as a matter of overriding public necessity - including cases of medical and investigative necessity.
- [460] Article 4(3)(b) AP II.
- [461] Articles 5(2)(a) and 5(2)(b) AP II.
- [462] Article 8 AP II.
- [463] *Ibid.*
- [464] Article 17(1) ICCPR.
- [465] Article 18 ACHPR, Article 17 ACHR, Article 8 ECHR. See also Article 10(1) ICESCR.
- [466] *Berrehab v. Netherlands* (1988) Series A, Publications of the European Court of Human Rights, No. 138; *Beldjoudi v. France* (1992) Series A, Publications of the European Court of Human Rights, No. 234-A2.
- [467] Articles 7-9 CRC.
- [468] Article II(e) 1948 Convention for the Prevention and Punishment of the Crime of Genocide.
- [469] RCMs are checked by the ICRC before distribution to ensure that they contain only family news.
- [470] Comment by a mother whose son has been missing since 1991 as a result of the conflict in the former Yugoslavia. ICRC Special Report: *The issue of missing persons in Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia*, 1998, p. 7.
- [471] ICRC *People on War* project, Bosnian woman whose husband is missing, 1999.
- [472] ICRC/TVE film, "Women and War: At the end of a gun", 2000, woman talking about the loss of her husband.
- [473] ICRC brochure: *Restoration of family links "Waiting for News"*, 1999.
- [474] ICRC information gathered by the author from delegates in the course of the research.
- [475] Articles 38, 51(3) and 125 GC III and Articles 94 and 142 GC IV.
- [476] Articles 24 and 50 GC IV and Article 78(2) AP I.
- [477] Article 50 GC IV.
- [478] Article 4(3)(a) AP II.
- [479] Article 13 ICESCR, Article 2 Protocol No.1 ECHR, Article 13 of the Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights, Article 17 ACHPR.
- [480] Articles 18, 28 and 29 CRC.
- [481] Article 10 CEDAW.
- [482] Article 22, 1951 Convention relating to the Status of Refugees.
- [483] ICRC information gathered by the author from delegates in the course of the research.
- [484] *Ibid.*
- [485] Article 57(2)(c) AP I.

- [486] Article 19(2) ICCPR, Article 10 ECHR, Article 13 ACHR and Article 9 ACHPR.
- [487] Article 20 ICCPR and Article 13(5) ACHR.
- [488] Article 12 GC I and Article 12 GC II and Articles 9 and 10 AP I.
- [489] Article 14 GC IV, which grants certain categories of persons the right to shelter in hospital, safety and neutral zones; the rules on protection and respect for the wounded and sick; and those on relief consignments, child welfare and family unity.
- [490] Article 27 GC IV.
- [491] Article 75 AP I.
- [492] Article 34 GC III, Article 93 GC IV and Article 38(3) GC IV respectively.
- [493] Article 34 GC III and Article 86 GC IV.
- [494] Article 72 GC III.
- [495] Article 23 GC IV with regard to free passage and Article 125 GC III, Articles 108 and 142 GC IV and Article 70 AP I with regard to relief consignments.
- [496] Article 17 GC I, Article 120 GC III and Article 130 GC IV.
- [497] Article 69 AP I and Article 58 GC IV. Moreover, the provisions which afford protection to children also include specific references to their religious education. Thus, for example, in situations when children have become separated from their families, parties to a conflict are required to facilitate the exercise of their religion in all circumstances (Article 24 GC IV and Article 78(2) AP I). The law also seeks to ensure that such children are looked after by persons of their own nationality, language and religion (Article 50 GC IV).
- [498] Article 24 GC I, Article 36 GC II and Article 15(5) AP I. See also Article 61(a) (vi) AP I, which provides that civil defence organizations can carry out religious assistance and must be respected and protected.
- [499] Article 28 GC I, Article 37 GC II, Articles 35-37 GC III, Articles 17, 58 and 93 GC IV.
- [500] Article 53 AP I.
- [501] Article 52 AP I. Places of worship and the property of institutions dedicated to religion were already protected by the Hague Regulations of 1907 (Articles 27 and 56). See also the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, and the Protocols of 1954 and 1999 thereto.
- [502] Article 2 AP II.
- [503] Articles 4(1) and 4(3)(c) AP II respectively.
- [504] Article 5(1)(d) AP II.
- [505] Article 16 AP II.
- [506] Articles 8(2)(b)(ix) and 8(2)(e)(iv) ICC Statute. See also Article 85(4)(d) AP I.
- [507] Article 2 ICCPR, Article 14 ECHR, Article 1 ACHR, and Article 2 ACHPR. These measures prohibit discrimination in the enjoyment of the rights laid down in the relevant instrument. Additionally, Article 26 ICCPR lays down a much more general principle of equal protection by the law which extends to issues not covered by the Covenant.
- [508] Article 18 ICCPR, Article 9 ECHR, Article 12 ACHR, Article 8 ACHPR and Article 14 CRC.
- [509] Article 1(A)(2) 1951 Convention relating to the Status of Refugees.

- [510] Article 33(1) 1951 Convention relating to the Status of Refugees and Article 45 GC IV.
- [511] Article II 1948 Convention on the Prevention and Punishment of the Crime of Genocide.
- [512] ABDEL HALIM A., “Attack with a friendly weapon”, in TURSHEN, M., TWAGIRAMARIYA, C. (eds), *What Women Do in Wartime: Gender and Conflict in Africa*, Zed Books, London & New York, 1998, p. 88.
- [513] Article 24 GC IV (identity discs or other forms of identification) and Articles 78(3) AP I.
- [514] Article 17 GC III. Article 4A GC III identifies the additional categories of persons.
- [515] Article 40 GC I and Article 41 GC II.
- [516] Article 17 GC III.
- [517] Article 97 GC IV.
- [518] Article 27 GC II, Article 20 GC IV and Article 18(3) AP I.
- [519] Articles 66(3) and 67 AP I.
- [520] Article 79(3) AP I.
- [521] Article 40 GC I, Article 18 GC III and Article 97 GC IV.
- [522] Article 16 GC I, Article 19 GC II, Articles 77 and 120 GC III and Articles 113 and 129 GC IV. Detaining Powers are required to facilitate the execution and authentication of documents such as wills, powers of attorney and letters of authority by prisoners of war and interned civilians, in particular by allowing them to consult a lawyer (Article 77 GC III and Article 113 GC IV).
- [523] Articles 26 and 27 1951 Convention relating to the Status of Refugees.
- [524] The criteria for receiving such a document are that the person concerned must not possess any other kind of document allowing a journey; have all required visas for the country of destination and possible countries of transit; and have an exit visa from the relevant authorities of the country he/she wants to leave.
- [525] UN Commission on Human Rights, draft *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*, E/CN.4/2000/62, 18 January 2000.
- [526] Article 23(h), 1907 Hague Regulations on the laws and customs of war.
- [527] Article 8(2)(b)(xiv).
- [528] A duty to compensate for violations of international humanitarian law was laid down in Article 3 of the 1907 Hague Regulations on the law and customs of war and, while it was first expressly addressed only in the Geneva Conventions of 1949, individual responsibility was already a principle of international humanitarian law at the turn of the century.
- [529] Article 2(3) ICCPR, Article 13 ECHR, Article 25 ACHR and Article 7(1) ACHPR.
- [530] Article 14 ICCPR, Article 6 ECHR, Article 8 ACHR and Article 7 ACHPR.
- [531] Article 41 Protocol 11 to the ECHR, Article 63 ACHR and Communication 59/91 to the African Commission on Human and Peoples’ Rights, *Embaga Mekongo Louis v. Cameroon*.
- [532] Security Council resolution 687, 3 April 1991.
- [533] It should be mentioned that during the 1980s the ICRC visited many women’s prisons in countries/regions such as, Uruguay, Argentina, Chile, Northern Ireland and the

Basque region. In many of these prisons living conditions at the time were not worse than those of male prisoners. In addition, many women detained in these countries were particularly radical, energetic and proactive and had developed various coping mechanisms; they therefore do not necessarily fit the current picture. However, this study concentrates on current experiences in detention and does not elaborate on living conditions and coping mechanisms of women visited in past situations.

- [534] It should be noted that adolescent girls in detention can suffer particular hardship in that their future social status (and economic survival) after release often depends on their chances of marriage. The socialization process of young girls in the family and community in preparation for marriage is also vitally important. Girls in detention generally lack the opportunity to enjoy these advantages and can be extremely vulnerable and ostracized on their release from prison.
- [535] While parties to a conflict are *prohibited* from declaring that quarter shall not be given, they are not obliged to intern prisoners of war. They may do so or may wholly or partially release them on parole (Article 21 GC III).
- [536] Articles 4(A)(1) to (3) GC III. Article 43 AP I provides that the armed forces of a party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates, even if that party is represented by a government or an authority not recognized by an adverse party. Such armed forces must be subject to an internal disciplinary system which, *inter alia*, must enforce compliance with the rules of international law applicable in armed conflict.
- [537] Article 4(A)(2)(3)(4)(5)(6), (B) GC III.
- [538] Article 44(2) AP I.
- [539] Article 5 GC III and Article 45 AP I.
- [540] Article 33 GC III. See also Article 4(B) GC III and Article 44(4) AP I.
- [541] Articles 64 ff. GC IV.
- [542] Article 37 GC IV.
- [543] Article 42 GC IV.
- [544] Article 43 GC IV.
- [545] Part III, Section IV GC IV.
- [546] Article 78 GC IV.
- [547] Article 45(3) AP I. The protection of Article 75 AP I is in fact also accorded to all other categories of persons deprived of their liberty for reasons related to the conflict, in addition to the specific - and more generous - rights and protections to which they are entitled.
- [548] Articles 47 and 46 AP I.
- [549] In an attempt to remedy this position, Article 6(5) AP II requires the authorities in power at the end of hostilities to endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict. The amnesty relates to the fact of participation and not to any violations of international humanitarian law which may have been committed during such participation.

- [550] Articles 5 and 6 AP II.
- [551] Article 4 AP II.
- [552] The principle of non-discrimination in the treatment to be granted *inter alia* to persons deprived of their liberty is reiterated in Article 27 GC IV, Article 75 AP I and Article 4 AP II.
- [553] For example, the rule requiring that women be especially protected against attacks on their honour, in particular against rape, enforced prostitution or any form of indecent assault (Article 27 GC IV) is applicable to *all* women in situations of armed conflict, including those who have been deprived of their liberty.
- [554] Article 132 GC IV and Article 76 (2) AP I.
- [555] Articles 25 and 97 GC III, Articles 76, 85 and 124 GC IV, Article 75(5) AP I and Article 5(2) AP II.
- [556] Article 97(4) GC IV.
- [557] Articles 89, 91 and 127 GC IV.
- [558] Article 88 GC III, Article 119 GC IV and Article 49 GC III respectively.
- [559] Article 76(3) AP I and Article 6(4) AP II.
- [560] Approved by ECOSOC resolution 663 C (XXIV), 31 July 1957 and resolution 2076 (LXII), 13 May 1977.
- [561] Article 126 GC III, Article 143 GC IV.
- [562] Article 5(2)(d) and (3).
- [563] See ICRC brochure: *Visits by the ICRC to Persons Deprived of their Freedom*, April 1990, updated September 1992, p. 1.
- [564] DAUDIN, P., REYES, H., “How visits by the ICRC can help prisoners cope with the effects of traumatic stress”, in DANIELI, Y., RODLEY, N., WEISAETH, L., *International Responses to Traumatic Stress*, Baywood Publishers, USA, 1996, p. 4.
- [565] See ICRC brochure: *ICRC Action on Behalf of Prisoners*, Geneva, 1997.
- [566] DAUDIN, P., REYES, H., “How visits by the ICRC can help prisoners cope with the effects of traumatic stress”, in DANIELI, Y., RODLEY, N., WEISAETH, L., *International Responses to Traumatic Stress*, Baywood Publishers, USA, 1996, p. 18.
- [567] In an analysis of the overall number of female health personnel in both 1998 and 1999, female staff formed by far the majority. The number of female doctors and male doctors is relatively balanced. Among health delegates (and nurses), women form the overwhelming majority. Moreover, they are well distributed in many countries in which the ICRC is active, although certain countries still lack female health delegates.
- [568] ICRC information gathered by the author from the ICRC’s training course.
- [569] ICRC information gathered by the author from delegates in the course of the research.
- [570] The term “family unit” has different connotations in different countries and societies, depending on cultural and community links.
- [571] Minors in detention who are not separated from adults are also particularly vulnerable to pressure and abuse. This issue is not dealt with in this study.
- [572] Article 23 GC III and Article 83 GC IV. Such places of detention must also be supplied with shelters against air bombardment (Article 23 GC III and Article 88 GC IV).

- [573] Article 22 GC III and Article 85 GC IV.
- [574] Articles 22 and 97 GC III and Articles 84 and 124 GC IV.
- [575] Articles 25 and 97 GC III, Articles 76, 85 and 124 GC IV and Article 75(5) AP I. With regard to prisoners of war, the Third Geneva Convention adds that they must be assembled in camps according to nationality, language and customs, but must not be separated from the prisoners of war of the armed forces with which they were serving at the time of their capture (Article 22 GC III).
- [576] Article 82 GC IV and Article 75(5) AP I. Also, if arrested, detained or interned for reasons related to an armed conflict, children must be held in separate quarters from adults except where families are accommodated as family units (Article 77(4) AP I).
- [577] Article 5(2)(c) AP II.
- [578] Article 5(2)(a) AP II.
- [579] Article 10 ICCPR and Articles 5(4) and (5) ACHR.
- [580] Rule 8, Standard Minimum Rules for the Treatment of Prisoners. See also Principle 8, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- [581] See also section on *Prohibition of ill-treatment*.
- [582] See also section on *Health and medical care* in relation to body searches.
- [583] The reasons for the development of such an internal hierarchy can vary; it may be owing to the internal prison rules or to segregation in society which is reflected in the “prison society”, or it may be because the internal prison order is based on the survival of the fittest.
- [584] Article 97 GC III, Articles 76 and 124 GC IV, Article 75(5) AP I and Article 5(2)(a) AP II.
- [585] Article 97 GC IV.
- [586] United Nations Human Rights Committee, General Comment No. 16 on Article 17, Thirty-second session, 1998, para. 8, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/17REV.4, 7 February 2000, p. 99.
- [587] World Medical Association Statement on Body Searches of Prisoners, adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993.
- [588] The ICRC does not define torture as it does not consider any definition broad enough to encompass all aspects of the problem; it generally uses the term “ill-treatment”. This is because there are always two aspects to ill-treatment, one physical and one psychological, and ill-treatment has strong cultural connotations (what is considered to be ill-treatment in one country may not be considered so in another – e.g. something may violate a religious taboo in one country but not in another). By not defining ill-treatment the ICRC gives itself sufficient scope for action. ICRC brochure: *ICRC Action on Behalf of Prisoners*, 1997.
- According to the 1984 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the following elements constitute torture: (a) severe pain and suffering, whether physical or mental; (b) intentional infliction of such pain and suffering; (c) infliction for such purposes as obtaining information or a

confession, punishing, intimidating or coercing, or for any reason based on discrimination of any kind; (d) infliction by or at the instigation of or with the consent of a public official or other person acting in an official capacity. Pain or suffering arising from lawful sanctions does not constitute torture.

- [589] GOLDBLAT, B., MEINTJES, S., “South African women demand the truth”, in TURSHEN, M., TWAGIRAMARIYA, C. (eds), *What Women Do in Wartime: Gender and Armed Conflict in Africa*, Zed Books, 1998, p. 41.
- [590] “Sexual torture and ill-treatment seem to be a particularly efficient way of breaking down a person’s self-confidence and identity. Women who have been sexually abused are exposed to transgressions of bounds which used to be taboo, and this increases a feeling of shame and guilt.” SVEAASS, N., “Rape in detention”, *Torture: quarterly journal on rehabilitation of torture victims and prevention of torture*, 1992, Vol. 2, No. 2, p. 53.
- [591] DAUDIN, P., REYES, H., “How visits by the ICRC can help prisoners cope with the effects of traumatic stress”, in DANIELI, Y., RODLEY, N., WEISAETH, L. (eds), *International Responses to Traumatic Stress*, Baywood Publishers, USA, 1996.
- [592] Having to carry a baby to term. For discussion on the differences between these separate violations and regarding conception, pregnancy and childbirth as three separate violations when forced on a woman (whether in detention or not), see CARPENTER, R.C., “Surfacing children: Limitations of genocidal rape discourse”, *Human Rights Quarterly*, John Hopkins University Press, May 2000, Vol. 22, No. 2.
- [593] *Ibid.* To have to give birth and take care of the child.
- [594] GOLDBLAT, B., MEINTJES, S., “South African women demand the truth”, in TURSHEN, M., TWAGIRAMARIYA, C. (eds), *What Women Do in Wartime: Gender and Armed Conflict in Africa*, Zed Books, 1998, p. 38.
- [595] JORGENSEN, L., MD, “Prejudice expected. The sequelae of sexual abuse against women reach far beyond the actual abuse”, *Torture: quarterly journal on rehabilitation of torture victims and prevention of torture*, Vol. 3, No 2, 1993, p.57.
- [596] Articles 13 and 14 GC III.
- [597] Articles 13 and 14 GC III.
- [598] Article 13 GC III.
- [599] Article 17 GC III. See also the provisions relating to disciplinary measures and permissible work (Article 52 GC III in particular).
- [600] Articles 4 and 5(3) AP II.
- [601] Article 5(2)(e) AP II.
- [602] Article 10(1) ICCPR and Article 5(2) ACHR.
- [603] Principles 1 and 6, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- [604] Established by the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
- [605] In general, every ICRC visit to persons who may have been subjected to ill-treatment will include a visit by an ICRC doctor or health delegate. The role of the ICRC doctor is to examine detainees and assess their physical and psychological condition. Such a

visit can be invaluable to reassure detainees as to their state of health, and victims of ill-treatment may find it easier to confide in a doctor.

- [606] ICRC brochure: *Women and War*, ICRC, Geneva, 1995.
- [607] “A woman prisoner held in a police station had already been seen twice in the preceding two weeks by a female ICRC delegate, who had established a good rapport with her. The prisoner, a young woman in her early twenties, had apparently been beaten when arrested, but had not said anything else. The delegate somehow suspected that ‘there might be something else’ although the woman had not mentioned that she had been ill-treated. On a subsequent visit the ICRC physician, a man, accompanied the delegate. The woman in question quietly asked to have a word with the doctor later. When the doctor saw the woman in private, she timidly, but firmly, told her story. She had been raped by two soldiers during a transfer from one place of detention to another. When the doctor asked why she had not said anything to the ICRC representative who had seen her previously, the woman replied that ‘this person’ could not give her counsel on what to do. Her main fear, which made it possible to surmount her natural apprehension about talking about the subject to a man, was that she might be carrying the baby of one of her aggressors.” Reported in DAUDIN, P., REYES, H., “How visits by the ICRC can help prisoners cope with the effects of traumatic stress”, in DANIELI, Y., RODLEY, N., WEISAETH, L. (eds), *International Responses to Traumatic Stress*, Baywood Publishers, USA, 1996.
- [608] Article 4(2) AP II.
- [609] Article 82 GC III. See Articles 83 to 108 GC III on all aspects of penal and disciplinary sanctions.
- [610] Article 87 GC III. The penalties must also be the same as those provided in respect of members of the armed forces of the Detaining Power who have committed the same violations (*ibid.*).
- [611] Articles 87, 88 and 89 GC III.
- [612] Article 88, GC III.
- [613] Article 117 GC IV.
- [614] Articles 118 and 119 GC IV.
- [615] *Ibid.*
- [616] Rule 31, Standard Minimum Rules for the Treatment of Prisoners. The rules also prohibit the use of instruments of restraint, such as handcuffs, chains, irons and straitjackets as punishment (Rule 33).
- [617] For sanitation and hygiene see sections on *Health* and *Hygiene and sanitation*.
- [618] Articles 25 and 97 GC III and Articles 85 ff. and 118 GC IV.
- [619] Articles 4 and 5 AP II
- [620] Article 38 GC III.
- [621] Rules 9, 10 and 11, Standard Minimum Rules for the Treatment of Prisoners.
- [622] Rule 21(1), Standard Minimum Rules for the Treatment of Prisoners.
- [623] See ICRC brochure: *ICRC Action on Behalf of Prisoners*, ICRC, Geneva, 1997, p. 8-9.
- [624] “The project developed in collaboration with a local company aimed to build stoves

for institutional purposes. The ICRC does not install the stoves but gives technical advice to the prisons' administrators, who may want to install them. These stoves were presented to prison administrators at a workshop. The main beneficiaries of this project were: (1) the detainees, as fuel consumption could be reduced by 50% and the spare money used for other purposes (the fuel budget amounts to around 10% of the total budget of a prison); (2) the cooks (mainly women), because of the reduced risk of burning and of adverse effects on health as compared with traditional stoves, which have a heavy smoke output; (3) the whole population, as the problem of deforestation is very significant in the country." ICRC information gathered by the author from delegates in the course of the research.

- [625] Food preparation and cooking and storage facilities should be hygienic and safe (see section on *Hygiene and Sanitation*).
- [626] The detaining authorities should provide the materials necessary for food preparation, including cooking facilities (stoves, pots, pans) and eating and drinking utensils (plates, cups, water containers, etc.).
- [627] See section on *Hygiene and Sanitation*.
- [628] Rule 20(2) Standard Minimum Rules for the Treatment of Prisoners.
- [629] Article 15 GC III and Article 81 GC IV.
- [630] Article 26 GC III and Article 89 GC IV. Article 26 GC III also provides that adequate premises must be provided for messing and prohibits collective disciplinary measures affecting food.
- [631] Article 89 GC IV.
- [632] Article 28 GC III and Article 87 GC IV.
- [633] Article 72 GC III and Article 108 GC IV.
- [634] Article 5(1)(b) AP II.
- [635] Rule 20(1), Standard Minimum Rules for the Treatment of Prisoners.
- [636] Babies and children will also need to be given sufficient clothing to maintain their hygiene and health.
- [637] Article 18 GC III.
- [638] Article 27 GC III. This article also provides that uniforms of enemy armed forces captured by the Detaining Power, if suitable for the climate, should be made available to clothe prisoners of war.

If the Detaining Power uses the labour of prisoners of war, they must be granted suitable working conditions, including as regards clothing. Such conditions may not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work (Article 51 GC III).

- [639] Article 90 GC IV.
- [640] Article 72 GC III and Article 108 GC IV.
- [641] Articles 5(1)(b) and (c) AP II.
- [642] Rules 17 and 18, Standard Minimum Rules for the Treatment of Prisoners.
- [643] Clothing provided by detaining authorities may not comply with the religious and cultural requirements of women, or the authorities may forbid detainees from wearing their own clothing and require standard uniforms to be worn.

- [644] Medical care includes treatment for illnesses, diseases and injuries, including surgical operations; gynaecological, obstetric, prenatal and postnatal health care; mental health care; dental care; ophthalmic care.
- [645] For more details on body searches see section on *Prison personnel*.
- [646] World Medical Association Statement on Body Searches of Prisoners, adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993.
- [647] In his comments on the WMA Statement, the ICRC's Dr Hernan Reyes stressed how important it was that intimate body searches not be carried out against the prisoners' will: "Obviously, no physician respecting an 'individual's privacy and dignity' and convinced that a body cavity search has to be done 'in a humane manner' would consent to do a forcible search," and further: "A physician should make sure that the prisoner has indeed consented to the procedure. Although the very issue of 'consent' in a custody situation is, of course, relative, a doctor should be in a position to ascertain whether coercion is being used by the detaining authority". Comments by Hernan Reyes, MD, on the 1993 WMA Statement on Body Searches of Prisoners, reported in *Torture*, Vol. 4, No. 2, 1994.
- [648] As part of sexual abuse, women are often told that they will be unable to conceive in the future.
- [649] Every country has its own laws governing the termination of pregnancy, which need to be fully taken into consideration.
- [650] Tuberculosis "may be a, or even the, major cause of death in prisons in developing countries, with mortality rates as high as 24%". The spread of TB is exacerbated by overcrowding, poor hygiene and ventilation, and lack of medical screening on admission to prison. REYES, H., CONINX, R., "Pitfalls of tuberculosis programmes in prisons", *British Medical Journal*, 1997, Vol. 315, No. 7120, p. 447. The prison environment is known to increase the risk of TB infection, and "ICRC delegates are increasingly confronted with the disease as the main cause of mortality in prisons. The best means of controlling TB (with or without concomitant HIV infection) in prisons is early detection and prompt treatment of active cases. However, the treatment of TB is complex. Incomplete treatment, that is, insufficient drug combinations or treatment over an insufficient period of time, has given rise to the notion that for TB "no treatment is better than bad treatment". As part of its efforts to tackle the growing TB problem in prisons, the ICRC initiated three projects in the southern Caucasus to develop TB control within the penitentiary services as part of national TB programmes. Following this experience, the ICRC and WHO drew up a document entitled "Guidelines for the control of tuberculosis in prisons", explaining the difficulties involved in treating TB within the prison environment. ICRC Special Report: *Assistance*, ICRC, Geneva, 2000, p. 27.
- [651] REYES, H., ICRC, "Women in prison and HIV" (extract from Chapter 9 of the book: *HIV in Prison: A Manual for the Newly Independent States*, in BOLLINI P. (ed.), WHO Europe, in print, 2001.
- [652] Article 15 GC III and Article 81 GC IV.
- [653] Article 29 ff. GC III.

- [654] Article 55 GC III.
- [655] Articles 109 to 117 GC III.
- [656] Article 91 ff. GC IV.
- [657] Article 72 GC III and Article 108 GC IV.
- [658] Article 13 GC III provides that prisoners of war may not be subjected to physical mutilation or to medical or scientific experiments of any kind not justified by their medical, dental or hospital treatment and carried out in their interest.
- [659] Article 11 AP I.
- [660] Articles 5(1)b and 5(2)d AP II.
- [661] Article 5(2)e AP II.
- [662] Rules 22, 24, 25, 26, 32, Standard Minimum Rules for the Treatment of Prisoners.
- [663] Rule 23, Standard Minimum Rules for the Treatment of Prisoners.
- [664] DAUDIN, P., REYES, H., "How visits by the ICRC can help prisoners cope with the effects of traumatic stress", First published in *International Responses to Traumatic Stress*, edited by DANIELI, Y., RODLEY, N., WEISAETH, L., Baywood Publishers, USA, 1996.
- [665] ICRC Special Report: *Assistance*, ICRC, Geneva, p. 16-17.
- [666] REYES, H., "Torture and its consequences", *Torture*, 1995, Vol. 5, No. 4, p. 72.
- [667] Source ICRC Health and Relief Division, 2000. The ICRC agrees with the World Health Organization (WHO) that HIV testing should not be mandatory and should be discouraged. However, there is no strict policy on making representations to the authorities if such testing occurs, as each case depends on the context and has to be considered with regard to the interests of the detainees.
- [668] If the prison authorities have a global strategy on HIV/AIDS prevention, the ICRC may also distribute syringes (as the delivery of syringes alone is insufficient to have a positive impact on HIV transmission, and could even increase it). Currently, there is a pilot project under way in prisons in one Asian country which includes the distribution of syringes. In 2001, pilot programmes including information and education on HIV/AIDS for prison staff and detainees are being launched in two African countries. Source ICRC Health and Relief Division, 2000.
- [669] Children born in prison should be provided with a birth certificate which does not state that they were born in detention.
- [670] Women with babies and children also need regular access to washing facilities in order to be able to keep themselves and their children and clothing clean. Children are especially susceptible to illness and diseases, having lower immunity. Women and children must be able to wash regularly to minimize the risk of skin diseases.
- [671] Article 29 GC III.
- [672] Articles 28 and 97 GC III.
- [673] Articles 95, 97 and 124 GC IV.
- [674] Article 5(1)b AP II.
- [675] Rules 12 to 14, Standard Minimum Rules for the Treatment of Prisoners.
- [676] *Ibid.*, Rules 15 and 16.

- [707] Article 75(4)(e) AP I, Article 6(2)(e) AP II.
- [708] Article 75(4)(f) AP I, Article 6(2)(f) AP II.
- [709] Article 86 GC III, Article 117(3) GC IV, Article 75(4)(h) AP I.
- [710] Article 75(4)(i) AP I.
- [711] Article 106 GC III, Article 73 GC IV, Article 75(4)(j) AP I, Article 6(3) AP II.
- [712] Article 3 common to the GCs.
- [713] Articles 82-88 and 99-108 GC III.
- [714] Article 88 GC III.
- [715] Article 130 GC III. See also Article 8(2) (a) (vi) ICC Statute.
- [716] Articles 64-78 GC IV.
- [717] Articles 117-126 GC IV.
- [718] Article 147 GC IV.
- [719] Article 75 AP I.
- [720] Article 75(1) AP I.
- [721] Article 76(2) AP I.
- [722] Article 76(3) AP I.
- [723] Article 3(1)(d) common to the GCs.
- [724] Article 8(2)(c)(iv) ICC Statute.
- [725] Article 6 AP II.
- [726] Article 6(4) AP II.
- [727] The needs identified in this paper are not exhaustive and there may be further needs specific to women or which impact on women in a different way, which should also be addressed.
- [728] The *People on War* Report, ICRC worldwide consultation on the rules of war, October 1999.
- [729] Although of course, it could be argued that the State would be in violation of its obligation to grant such persons the protection enshrined in human rights law, this very legalistic argument fails to take into account the realities of the situation. It is also questionable whether a State would be responsible in respect of territories over which it has lost control.
- [730] 27th International Conference of the Red Cross and Red Crescent, Geneva, 31 October-6 November 1999.

Mission

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance.

It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.

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